

The Judge's Findings of Fact

Applicant is a 38-year-old employee of a Federal contractor. He served in the military from 1997 to 2001. From 2006 to April 2014, he worked in a job that he left because he wanted a healthier environment. He was then unemployed, but worked helping his brother who has post-traumatic stress disorder. At some point, he moved to another state in anticipation of a job, but it was not what he thought it would be and returned home to be with his brother. His brother provided him support until he obtained his current job in August 2015. He attributed his financial difficulties to having surgery on his hand, suffering from depression, and being on medication. He married in May 2016 and has three stepchildren.

Applicant has four unresolved debts: a vehicle loan for about \$8,800, a credit card debt for about \$650, a student loan for about \$27,300, and a cell phone debt for about \$900. He sold the vehicle for \$500 in 2014, kept the money, and did not pay the creditor. He defaulted on the credit card in 2014 and has not contacted the creditor or made any payments. He has not made any efforts to repay the student loan from 2007 to 2016. After he stopped paying the cell phone bill in 2014, he did not attempt to pay it.

In April 2016, Applicant contacted an attorney who recommended he file bankruptcy. He has other delinquent debts than those alleged in the SOR. He estimated that he had about \$30,000 in debts and his wife had about \$60,000. In July 2016, he filed Chapter 7 bankruptcy. He believes his student loan is with a private creditor and will be included in the bankruptcy. He completed the mandatory financial counseling. His bankruptcy has not yet been discharged, and it is unknown what debts will be discharged or when. He acknowledged he made poor financial decisions in the past.

The Judge's Analysis

Because of Applicant's unpaid or unresolved financial delinquencies, disqualifying conditions 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligation, are applicable. He disagreed with the balance of his student loans, but never resolved the dispute with the creditor. He has not made payments towards his debts. His debts are recent, multiple, and not resolved. He filed Chapter 7 bankruptcy, but the debts have not been discharged. He did not contact the attorney until after receipt of the SOR. It is unknown what debts are included in the bankruptcy. The Judge made formal findings against Applicant on each of the four alleged debts.

Discussion

Applicant challenges some of the Judge's findings and conclusions. In such a circumstance, we examine a Judge's findings to see if they are supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015) and ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

In the appeal brief, Applicant admitted that he was not able to meet his financial obligations

for a period, but contends it was not as a result of an unwillingness to do so. He maintains that he voluntarily left his job in April 2014 to take a job in another state; however, when he arrived in the other state, he learned the new job was no longer available. He asserts the Judge's statement, "the job was not what [he] hoped it to be" was not accurate and that he would have taken the job had it been available.¹ Appeal brief at 1. At the hearing, the following exchange occurred:

[Applicant]: . . . [My sister] had a job lined up for me out there. So I had actually went out that way and in the hopes of getting that job lined up and when I arrived out there it was nothing like she said. And it wasn't - - it was a big flop.

* * *

[Judge]: But the job did not materialize in [the specific city]?

[Applicant]: No, ma'am. It didn't.

[Judge]: So you weren't leaving a job out there. You just were coming back to a - -

[Applicant]: I was actually going to tend to stay out there and work, find a job out there, but when I found out my brother wasn't doing well, I came this way to move in with him . . .²

Based on Applicant's testimony that the job was "a big flop," the Judge's finding that the job "was not what he thought it to be" was a reasonable inference based on the evidence. Moreover, even if the Judge's finding was an error, it was harmless because it likely did not affect the outcome of the decision. *See, e.g.*, ISCR Case No. 08-07528 at 2 (Dec. 29, 2009).

Applicant also argues that the Judge's statement in her mitigation analysis that he did not contact the attorney about filing bankruptcy until after his receipt of the SOR is untrue. He states that he began to regain control of his finances in 2014 and, when that was more than he could handle, began seeking bankruptcy relief. He claimed he did not wait until he received the SOR. At the hearing, he testified that he contacted the attorney "in the March time frame." Tr. at 42-43. In his closing statement, he stated that he thought he saw the attorney before the SOR was issued. Tr. at 78. However, he also offered a letter from the attorney in which the attorney stated that Applicant contacted him in April 2016 to discuss his options. Applicant's Exhibit A. On this issue, the Judge may have determined that the attorney's letter warranted more weight than Applicant's testimony. Based on our review of the record, we conclude that substantial evidence exists to support the Judge's finding that Applicant did not contact the attorney about filing bankruptcy until after receipt of the SOR.

Applicant further contends that the Judge's determination that his debts are "recent, multiple,

¹ In her decision, the Judge actually stated, "but it was not what he thought it would be." Decision at 2.

² Tr. at 57, 58. During the hearing, the Judge advised Applicant that his testimony was vague and requested he be more specific. Tr. at 55-56.

and not resolved” is inaccurate. He states that none of the debts are recent, four debts can hardly be considered multiple, and all of the debts were included in the bankruptcy filing, but they had not yet been discharged.³ Applicant’s argument is not persuasive. Having unsatisfied debt is a continuing course of conduct for the purpose of mitigation analysis. The Board has not defined “recent.” Applicant has two delinquent debts from 2014. It was not arbitrary for the Judge to categorize those debts as recent. *See, e.g.*, ISCR Case No. 06-23369 at 4 (App. Bd. Aug. 1, 2008). The Judge’s characterization of the debts as “multiple” and “unresolved” is supported by substantial evidence.

Additionally, Applicant contends that the Judge erred by finding that he made no attempts to contact his creditors or make payments on his debts from the time he left his job in April 2014. He specifically claims he made payments on the cell phone account in November and December 2014 and contacted the creditor to inform it that he was unemployed and voluntarily suspended his account. The record, however, does not support his claims. Applicant presented no evidence of the November and December 2014 payments. He testified that the cell phone was turned off in 2014 and that he did not contact the creditor and just let the debt go. Tr. 41-42. He testified similarly regarding the other debts. Tr. 29, 30, and 36-40. We find no reason to conclude that the Judge erred in her findings about Applicant’s actions or omissions in addressing his delinquent debts.

The balance of Applicant’s arguments amount to either a claim that the Judge did not consider record evidence or a disagreement with the Judge’s weighing of the evidence. For example, he highlighted that he experienced car problems that have set him back financially and that he has taken financial education classes. He also argues that the bankruptcy proceeding has provided him an opportunity to live within his means. Such arguments, however, are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to the law. *See, e.g.*, ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra’anan

³ Applicant neither submitted a complete copy of his bankruptcy petition nor provided a copy of the schedules that listed his various debts. The record supports the Judge’s conclusion that Applicant has not established what debts will be discharged.

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board