

KEYWORD: Guideline F

DIGEST: Once alleged debts were either admitted by Applicant or proven by record evidence, the burden shifted to Applicant to mitigate the security concerns arising from those debts. Directive ¶ E3.1.15. As the Judge correctly found, Applicant’s bankruptcy petition only addresses four of the alleged debts. The mere fact that debts may no longer appear on Applicant’s credit reports generally does not establish meaningful, independent proof of their mitigation. Adverse decision affirmed.

CASENO: 16-00090.a2

DATE: 06/11/2018

DATE: June 11, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-00090
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 4, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 13, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On January 16, 2018, we remanded the case. On March 8, 2018, the Judge issued a Remand Decision, denying Applicant’s request for a security clearance. Applicant again appealed pursuant to the Directive.

Applicant raised the following issue in his latest appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s Remand Decision.

The Judge’s Findings of Fact

Applicant, who is 46 years old, has been working for a defense contractor since 2012. He has been consistently employed since 2006. He served in the military for less than two years and received a general discharge. He has never been married and has a minor child.

The SOR alleges that Applicant has two Federal tax liens (one for about \$64,000 and the other for about \$5,500) and 16 other delinquent debts totaling about \$45,000. He admitted the tax liens and one other debt, and denied the remaining debts. The two liens were filed in 2011. In 2005, Applicant did not have any taxes withheld from his pay and later did not have funds available to pay the taxes. He failed to file his income tax returns for 2006 and 2007. No evidence was presented that he filed the missing tax returns or corrected his Federal income tax withholdings. Credit reports establish the 16 other alleged debts that became delinquent between 2007 and 2014.

In early 2017, Applicant filed Chapter 13 bankruptcy. The bankruptcy petition includes the two alleged tax liens and two other alleged debts. It also lists delinquent Federal taxes totaling almost \$100,000 for 2005-2012.¹ Applicant began making payments on the bankruptcy soon after its filing. In mid-2017, the bankruptcy plan was confirmed. Applicant has continued to make bankruptcy payments through a monthly automatic payroll deduction.

Applicant attributed his financial problems to “poor tax management” and his fiancée’s unemployment. Decision at 3. He provided no details about the timing of her unemployment. No documentary evidence was provided about his debt-resolution efforts before 2017 or about the resolution of the 14 alleged debts not included in the bankruptcy.

¹ We note that Applicant’s bankruptcy petition does not specifically list the two alleged Federal tax liens. The tax liability from those liens appears to be included in the listed tax debt of about \$100,000 for 2005-2012.

The Judge's Analysis

Applicant's delinquent debts total over \$114,000, became delinquent between 2007 and 2014, and remain delinquent. He presented no documentary evidence that he attempted to resolve those debts before 2017. While his fiancée's unemployment was a condition beyond his control, he failed to demonstrate that he acted responsibly under the circumstances. There is no evidence that he sought credit counseling. His financial problems apparently are not under control because his monthly bankruptcy payment exceeds his listed monthly remainder. He filed Chapter 13 bankruptcy and has been adhering to the bankruptcy plan for one year; however, 14 of the alleged debts remain unaddressed. No documentary evidence was presented of the missing Federal income tax returns. He has complied with the bankruptcy plan to repay delinquent Federal income taxes for 2005-2012. Mitigating condition 20(g) applies to the alleged tax liens.² He has not demonstrated that he rectified his poor decision-making. Nor has he provided a satisfactory explanation for the delay in addressing his delinquent debts.

Discussion

Applicant contends the Judge erred by considering debts that were no longer valid and have been mitigated. He indicated that he listed in his bankruptcy petition all debts that were present on recent credit reports from the three credit reporting agencies, and those debts are being resolved through the bankruptcy. We do not find Applicant's argument persuasive. First, because the purported credit reports upon which the bankruptcy petition is based were not offered into evidence and are not part of the record, Applicant's statements regarding those credit reports constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. Second, the Judge's material findings about the alleged debts were based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Once alleged debts were either admitted by Applicant or proven by record evidence, the burden shifted to Applicant to mitigate the security concerns arising from those debts. Directive ¶ E3.1.15. As the Judge correctly found, Applicant's bankruptcy petition only addresses four of the alleged debts. The mere fact that debts may no longer appear on Applicant's credit reports generally does not establish meaningful, independent proof of their mitigation. *See, e.g.*, ISCR Case No. 14-03612 at 3 (Aug. 25, 2015). Debts may fall off credit reports merely due to the passage of time. *See, e.g.*, ISCR Case No. 03-20327 at 6 (App. Bd. Oct. 26, 2006). We find no reason to disturb the Judge's conclusion that Applicant failed to demonstrate that he was responsibly addressing the alleged debts not listed in his bankruptcy petition.

Applicant also contends that the Judge erred in concluding he provided no documentary evidence of filing his income tax returns for 2006 and 2007. He argues that all of his past tax returns had to be filed for the tax debts to be listed in his bankruptcy petition. We note, however, that 11 U.S. Code § 1308 provides that debtors petitioning for Chapter 13 bankruptcy are only required to file tax returns for tax periods within four years of the bankruptcy filing. Applicant has not

² Directive, Encl. 2, App A ¶ 20(g) states, "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements."

established that the Judge erred in concluding Applicant failed to establish that he filed his Federal income tax returns for 2006 and 2007.

Applicant further contends that the Judge did not consider that his tax liability is being resolved through this bankruptcy. We find this contention has no merit. The Judge found that Applicant's tax debt was listed in his bankruptcy petition and concluded that mitigating condition 20(g) applied to the tax debts.

Additionally, Applicant argues the Judge erred in concluding that he sought no credit counseling because all debtors must undergo such counseling to file Chapter 13 bankruptcy. We note that Applicant checked a block in his bankruptcy petition indicating that he had received a briefing from an approved credit counseling agency, but did not have a certificate of completion. The checked block also reflected that he was required to file a copy of the certificate of completion within 14 days of the bankruptcy filing. Applicant Exhibit (AE) C. Furthermore, he argues that Judge erred in concluding he presented no evidence of correcting his tax withholdings by pointing to his pay statement in the record that showed his tax withholdings had been corrected. One company pay summary for an unspecified period in 2018 reflected that he earned a total of about \$7,450 and paid about \$950 and \$315, respectively, in Federal and state income taxes. AE D. Even if the Judge erred in concluding Applicant sought no financial counseling and failed to correct his tax withholdings, such errors were harmless because they likely did not affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In this regard, we note the Judge's adverse decision is largely based on Applicant's delay in addressing his financial problems and in his failure to demonstrate that he has taken responsible action to resolve the alleged debts not listed in the bankruptcy petition. The Judge did not err in his overall conclusion that Applicant failed to mitigate the alleged security concerns.

Applicant's appeal brief fails to establish the Judge committed any harmful error. 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision **AFFIRMED**.

Signed: Michael Ra'anan
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