

KEYWORD: Guideline F

DIGEST: From our review of the record, we conclude that Applicant's bankruptcy along with his ongoing IRS tax debt, state tax liens, and post-bankruptcy delinquent consumer debts are sufficient to support the Judge's adverse clearance determination. Adverse decision affirmed.

CASENO: 16-02912.a1

DATE: 04/06/2018

DATE: April 6, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-02912
)	
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 November 19, 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 hearing. On December 22, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

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

The Judge’s Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. In 2000, he earned a bachelor’s degree that was funded by federally-guaranteed student loans.

The SOR alleged that Applicant received a Chapter 7 bankruptcy discharge in 2014, had tax liens from State A for about \$15,000 and State B for about \$1,400; was indebted to the IRS for 2011, 2012, and 2014 in the amount of about \$10,000; was indebted to the U.S. Department of Education (U.S. DOE) for about \$137,000; was indebted to a student loan servicing agent for about \$16,500; and had five delinquent consumer debts exceeding \$38,000. Applicant attributed his financial problems to periods of unemployment and his parents’ major medical issues.

It is unclear whether Applicant’s IRS indebtedness qualifies for a bankruptcy discharge. He provided no proof that he filed his Federal tax returns for the years in question “to meet the ‘within two-year filing of returns’ requirement before he petitioned for bankruptcy in 2014.” Decision at 3-4. Applicant claimed the State B lien was released because of his bankruptcy discharge and provided an email from a bankruptcy attorney indicating the State A lien “as one of the scheduled debts that should be discharged in his 2014 bankruptcy.” Decision at 4. The bankruptcy discharge does not address the state tax liens in the discharge. “Neither lien release claim is adequately supported and is not entitled to acceptance without corroboration.” *Id* at 4. His state tax liens likely survived his bankruptcy discharge.

Applicant listed \$107,000 of federally-funded student loans in his bankruptcy petition. However, it is unlikely that his student loans were discharged in the bankruptcy. He provided no documentary proof that those student loans were discharged as claimed. “As a general rule, federal student loan debt cannot be discharged in bankruptcy without a showing of extreme hardship.” *Id.* at 5.¹ His post-bankruptcy efforts to make payment arrangements on his student loans over a two-year period were unsuccessful.

¹ A footnote following this quoted sentence reflected, “*See Sallie Mae website: [2](https://salliemae.com/student-loans/manage-your-private-st[.]”</p></div><div data-bbox=)*

In 2015, Applicant had an installment agreement with the IRS under which he ceased making monthly payments because he could not afford them. In 2017, he entered into another IRS installment agreement, but it is unclear whether he has made the monthly payments under that agreement. He was offered an opportunity to supplement the record with proof of payments, but provided no additional information.

Applicant's five consumer debts were not opened until 2015 and became delinquent in 2016. He provided no documentation of either paying or otherwise resolving these debts, and they were not included in his bankruptcy. Applicant failed to provide proof of payments towards these debts after being given an opportunity to supplement the record with such documentation.

The Judge's Analysis

Each alleged delinquent debt is documented in either Applicant's admissions or credit reports. Applicant failed to provide evidence that his state tax liens were discharged in his bankruptcy, which precludes him from getting credit under the "acted responsibly under the circumstances" prong of mitigating condition 20(b).² No proof was provided that Applicant's IRS tax claims were discharged in bankruptcy. In the absence of evidence that the IRS tax claims are being addressed through an installment agreement, credit cannot be extended to him under mitigating condition 20(g).³ While his bankruptcy petition listed \$107,000 of student loans, he provided no confirmation that those loans were discharged due to hardship. The student loans remain unaddressed. The consumer debts are also unresolved. Applicant's mixed efforts in addressing his delinquent debts are not sufficient to support favorable findings and conclusions.

Discussion

Applicant contends he is making consistent on-time monthly payments to the IRS. The Judge, however, found that Applicant provided no proof of those monthly payments. The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts. *See, e.g.*, ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). The Judge's finding that Applicant failed to provide proof of those payments is supported by substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). This allegation of error is resolved adversely to Applicant.

Applicant also contends the two state tax liens were filed in error and have been removed from his record. As best we can discern, he is claiming he provided proof of their removal from his

² Directive Encl. 2, App. A ¶ 20(b) states, "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]"

³ 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."

“records” at the hearing.⁴ The evidentiary record contains two complete credit reports with entries listing the state tax liens. One of those credit reports was obtained a year and a half after Applicant received his bankruptcy discharge and does not reflect the state tax liens were released, removed, or otherwise resolved. The evidentiary record also contains a letter that Applicant presumably sent to State B requesting dismissal of the tax lien due to his bankruptcy discharge, but there is no document in the evidentiary record showing State B acted on that request. This allegation of error is resolved adversely to Applicant.

Citing to a credit report, Applicant further contends that he provided proof that his student loans were discharged in his bankruptcy. The record contains contradictory evidence on this issue. First, in his security clearance application submitted in September 2015 (*i.e.*, about nine months after his bankruptcy discharge), Applicant disclosed that he was working with the U.S. DOE to arrange an affordable repayment plan for a delinquent student loan totaling about \$137,000 and was also working with another creditor on a delinquent student loan totaling about \$16,500. Government Exhibit (GE) 1. Second, in his background interview in October 2015, he reportedly indicated his U.S. DOE student loan was in a deferment status until February 2016, and he was still working on a repayment plan for that loan. During that interview, he also indicated that he was working with the other student loan creditor on a repayment plan, but had not yet heard back from the creditor. GE 2. On the other hand, the record also contains a post-bankruptcy credit report that listed four entries for U.S. DOE student loans that each indicated “Status: Included in Bankruptcy[,] Comments: Bankruptcy chapter 7[,] Bankruptcy discharged” and each account’s entries for Balance, Credit Limit, Actual Payment, Scheduled Payment, and Past Due were zero.⁵ GE 6. At the hearing, Applicant testified that his student loans were forgiven and pointed to the zero balances reflected in that credit report as proof. He also testified that he spoke to the creditors who told him the student loans were “forgiven due to the bankruptcy.” Tr. at 55. In response to that testimony, the Judge stated that student loans are not typically discharged in bankruptcy. Applicant then indicated that he would provided correspondence from the creditors showing the loans were forgiven. Tr. at 55-56. In his post-hearing submission, Applicant did not provide any documents to establish that his student loans were forgiven or discharged.

The Judge’s decision did not address the entries in post-bankruptcy credit report that reflected the U.S. DOE student loans were included in the bankruptcy and had zero balances. While a Judge is not required to discuss every piece of evidence in the record, he or she is expected to examine relevant evidence that may have an impact on a material matter in the case. *Compare, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015)(a Judge is not required to discuss each and every piece of evidence) with ISCR Case No. 14-02563 at 3 (App. Bd. Aug. 28, 2015)(the Appeal Board will consider whether a Judge’s decision examined relevant evidence in determining if his

⁴ Appeal Brief at 1-2. Applicant’s use of the term “records” presumably refers to his credit reports.

⁵ The post-bankruptcy credit report also contains entries for the U.S. DOE loans that were reported before the bankruptcy was filed and reflected zero balances. Additionally, it reflected student loan accounts from the other creditor that have zero balances and one student loan account from a third creditor that was opened before the bankruptcy, reported after the bankruptcy, reflected a balance of \$7,268, and indicated the status is “Pays as agreed.” GE 6.

or her rulings or conclusions are arbitrary or capricious). *See also*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014) (a Judge’s task is to resolve apparent conflicts in the evidence). In this case, even if the Judge erred in not discussing the post-bankruptcy credit report entries involving the U.S. DOE student loans, we conclude such an error was harmless because it likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). From our review of the record, we conclude that Applicant’s bankruptcy along with his ongoing IRS tax debt, state tax liens, and post-bankruptcy delinquent consumer debts are sufficient to support the Judge’s adverse clearance determination.

The balance of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. Those arguments, however, are not enough to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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 is **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