

KEYWORD: Guideline F

DIGEST: Applicant filed for Chapter 7 bankruptcy protection in 2003,. He filed again for Chapter 7 protection in June 2017, and he claimed that all of his SOR debts were addressed in the petition. His bankruptcy filing reveals a \$60,000 priority claim in favor of the IRS for back taxes. He also owed money to his state for back taxes, which he paid off through garnishment. Adverse decision affirmed.

CASENO: 17-00303.a1

DATE: 01/29/2018

DATE: January 29, 2018

| | | |
|----------------------------------|---|------------------------|
| _____ |) | |
| In Re: |) | |
| |) | |
| ----- |) | ISCR Case No. 17-00303 |
| |) | |
| 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 May 8, 2017, 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 November 2, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 has bachelor’s and master’s degrees and is working on a second bachelor’s. He has been employed as a Federal contractor since late 2015. Applicant’s SOR lists numerous delinquent debts. Applicant testified, and the Judge found, that he had experienced periods of unemployment, which contributed to his financial difficulties. Applicant stated that he had been a victim of identity theft, and his debts were also affected by medical expenses.

Applicant filed for Chapter 7 bankruptcy protection in 2003, although he testified that his debts were not discharged. He filed again for Chapter 7 protection in June 2017, and he claimed that all of his SOR debts were addressed in the petition. Applicant’s delinquent debts include medical expenses, a broken apartment lease, telecommunication services, tuition expenses, etc. His bankruptcy filing reveals a \$60,000 priority claim in favor of the IRS for back taxes. He also owed money to his state for back taxes, which he paid off through garnishment. He hired a tax relief firm to assist him in resolving his debt with the IRS. He states that he has submitted an offer in compromise and is awaiting a response from the IRS.

Applicant has not had financial counseling but intends to receive it in the future. He has less than \$5,000 in savings and no investments. In late 2016, he loaned his girlfriend about \$6,000 and she has paid back about \$4,800. He traveled to Australia in the summer of 2014, and his girlfriend paid all of the expenses.

The Judge’s Analysis

The Judge noted that, as of the date of the hearing, Applicant’s debts had not been discharged in bankruptcy. She cited to evidence that Applicant had paid some of his debts, although these were not alleged in the SOR. She also took into account circumstances that were outside Applicant’s control, such as his unemployment and medical expenses. The Judge cited to Applicant’s claims to have been a victim of identity theft, acknowledging that he had submitted disputes to the credit bureaus. However, she also noted that Applicant had not filed a police report upon discovery of the

purported theft. Although she addressed some of Applicant's debts in his favor, the Judge concluded that he had not provided evidence that others had been resolved. Although Applicant's bankruptcy petition is a legal means of resolving debts, she noted that such a procedure is not equivalent to actually paying debts when due.

In the whole person analysis, the Judge noted Applicant's bankruptcy petition, which, she stated, will likely provide him with debt relief. She stated that some of Applicant's financial decisions raise questions about his ability to manage his finances and that Applicant has not demonstrated a track record of financial reliability.

Discussion

Applicant contends that the Judge did not give proper consideration to his having paid many of his debts. He cites to his unemployment and his medical problems, which were beyond his control. He also cites to evidence that he has hired a firm to assist him in resolving his tax debt. He notes that he has never gotten into trouble with the law and that he is going back to school to improve his job skills. He states that he has taken a financial course, contrary to the Judge's finding. He argues that without a clearance he will not be able to continue his employment.

We have considered Applicant's brief in light of the record evidence as a whole. The Judge made findings about the things that Applicant has cited in his brief. His argument consists in essence of a disagreement with the Judge's weighing of the evidence. He has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017). We note Applicant's argument that his continued employment is dependent on his receiving a clearance. However, the Directive does not permit us to consider the impact that an unfavorable decision might have upon an applicant. *See, e.g.*, ISCR Case No. 16-01787 at 2 (App. Bd. Nov. 22, 2017). Applicant claims that he has received financial counseling. The record does not contain evidence that he has received counseling, although that could be inferred from his ongoing bankruptcy procedure. Even if the Judge erred, however, it did not likely affect the outcome of the case. Therefore, any error in this regard is harmless. *See, e.g.*, ISCR Case No.15-05047 at 4 (App. Bd. Nov. 8, 2017).

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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