

KEYWORD: Guideline F

DIGEST: In his appeal brief, Applicant contends that his bankruptcies should not be used against him because he is entitled to the legal protections of bankruptcy. He also argues that 11 U.S.C. § 525, *Protection against discriminatory treatment*, precludes his discharged debts from being used against him. We note that Guideline F has no disqualifying condition that raises a security concern merely because an applicant has filed bankruptcy. In discussing § 525 in the past, we have stated that, while an applicant has a legal right to declare bankruptcy, the Government is not precluded from considering the negative security implications of his or her history of recurring financial problems. In this case, the Judge noted that she was not basing her decision on “the bankruptcies themselves” but on Applicant’s history of financial indebtedness surrounding those bankruptcies. Applicant has not established that the Judge erred in considering his financial history, including his bankruptcies. Adverse decision affirmed.

CASENO: 17-00684.a1

DATE: 08/07/2018

DATE: August 7, 2018

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| In Re: ----- Applicant for Public Trust Position |)))))))) | ADP Case No. 17-00684 |
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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 trustworthiness designation. On May 3, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 March 29, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

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

The Judge’s Findings of Fact

Applicant, who is 54 years old, has never been married and has no children. He honorably served in the military for about 9 years. In 2013, he retired after 20 years of Federal employment. He was unemployed from early 2013 to late 2014 and, for about 15 of those months, was a full-time student and earned a bachelor’s degree. In late 2014, he began an internship, but was not hired as a full-time employee. He was then unemployed for about six months. He appears to have been fully employed since late 2015.

The SOR, as amended, alleges that Applicant received a Chapter 7 bankruptcy discharge in 1996, received a Chapter 13 bankruptcy discharge in 2003, had a Chapter 13 bankruptcy dismissed in 2009 for failure to make payments, and received a Chapter 7 bankruptcy discharge in 2017.¹ The amended SOR also alleged that Applicant owed about \$9,900 to the IRS for 2004-2006; owed about \$3,400 to the IRS for 2009; owed about \$3,815 to a local government for 2013; had a past-due mortgage account for about \$128,000 in foreclosure with a balance of about \$215,000, and had five collection accounts totaling about \$4,700. He admitted some of the SOR allegations and denied others. The denied allegations were established by record evidence. He attributed his financial problems to medical problems he began experiencing in 2009 and to inconsistent employment. The record is silent about the impact that Applicant’s past circumstances had on his ability to pay his debts and on his income and expenses.

The Judge’s Analysis

“Because bankruptcy is an acceptable form of debt resolution, the concern is not with the bankruptcies themselves, but with underlying history of financial indebtedness surrounding them. Applicant did not provide sufficient evidence to fully establish any of the potentially applicable mitigating factors.” Decision at 6. Applicant has not met his ultimate burden of persuasion.

Discussion

¹ The SOR was amended in Department Counsel’s File of Relevant Material (FORM). Applicant did not submit a response to the FORM.

In his appeal brief, Applicant contends that his bankruptcies should not be used against him because he is entitled to the legal protections of bankruptcy. He also argues that 11 U.S.C. § 525, *Protection against discriminatory treatment*, precludes his discharged debts from being used against him.² We note that Guideline F has no disqualifying condition that raises a security concern merely because an applicant has filed bankruptcy. In discussing § 525 in the past, we have stated that, while an applicant has a legal right to declare bankruptcy, the Government is not precluded from considering the negative security implications of his or her history of recurring financial problems. *See, e.g.*, ISCR Case No. 01-00359 at 3 (App. Bd. Jul. 31, 2003). In this case, the Judge noted that she was not basing her decision on “the bankruptcies themselves” but on Applicant’s history of financial indebtedness surrounding those bankruptcies. Applicant has not established that the Judge erred in considering his financial history, including his bankruptcies.

Applicant further argues that all of the alleged debts, except for the tax debt to the local government, have been discharged in his latest bankruptcy and should not have been listed in the SOR. It is well established that, even if debts are resolved through payment, bankruptcy, or by other means, a Judge may still consider the circumstances underlying the debts for what they may reveal about the applicant’s trustworthiness eligibility. *See, e.g.*, ADP Case No. 15-06160 at 2 (App. Bd. Jul. 18, 2017).

In his arguments, Applicant highlights his periods of unemployment, his medical problems, and his military and Federal civilian service. We note that the presence of some mitigating evidence does not alone compel the Judge to make a favorable trustworthiness decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 16-01251 at 2 (App. Bd. Jun. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination “. . . may be granted only when ‘clearly consistent with the interests of the national security.’” *See, e.g.*, ADP Case No. 16-01251, *supra*, at 2. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

² 11 U.S.C. § 525 provides, in part, that “a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, **solely because** such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.” [Emphasis added.]

Order

The Decision is **AFFIRMED**.

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

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

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