

KEYWORD: Guideline F

DIGEST: Applicant contends that the lien on his home was not held by a Federal agency, but instead by the bank that issued the Federal small business loan. His testimony at the hearing supports this claim on appeal. However, this error in the findings of fact was harmless. Adverse decision affirmed.

CASENO: 17-02018.a1

DATE: 10/19/2018

DATE: October 19, 2018

In Re:

Applicant for Security Clearance

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) ISCR Case No. 17-02018
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)
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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 security clearance. On June 29, 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 July 2, 2018, after the hearing, Defense Office of Hearings and Appeal (DOHA) Administrative Judge Mark Harvey 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 Finding of Fact

Applicant served 11 years on active duty in the military and is currently an officer in the reserves. He is married and has three children. The SOR alleged that Applicant had three delinquent debts totaling about \$218,000. In his response to the SOR, he admitted each debt.

In 2006, Applicant purchased a business that failed in 2009 during the recession. He was then unemployed for several months. From about 2010 to 2012, he earned about \$140,000 annually in a mobilized military billet. From about 2012 to 2015, he earned about \$90,000 annually. From about 2015 to 2017, he earned about \$25,000 annually. In his current position, he earns about \$140,000 annually.

Two of the alleged debts were home-equity loans that he used to fund his failed business. Those two debts are charged off. The third debt is a delinquent Federal small business loan. He thought he had an agreement to settle the latter loan for \$10,000; however, the Federal agency placed a lien on his home for about \$121,000.

Applicant consulted a bankruptcy attorney who recommended he pay the Federal lien first. In 2014 and 2015, he contacted the Federal agency or bank holding the loan to discuss settlement plans. The agency has not contacted him in the past three years. He considered filing bankruptcy but was advised to wait until the creditors took action against him. In his SOR response, he stated that he intended to pay the three debts. He is waiting for the creditors to attempt to negotiate resolution. Except for the three delinquent debts, his finances are in good order.

The Judge’s Analysis

Applicant encountered conditions beyond his control such as underemployment, unemployment, and the recession that caused his business to fail, but he did not act responsibly under the circumstances. He did not provide evidence that he made any payments to address the three delinquent debts since 2009. He is waiting for the creditors to contact him to make settlement offers. He did not prove that he was unable to make payments on those debts over the past eight years. He failed to mitigate the security concerns arising from the debts.

Discussion

Applicant's brief includes matters that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant claims the Judge committed various "factual and or legal error." Appeal Brief at 1. As an example, he contends that the lien on his home was not held by a Federal agency, but instead by the bank that issued the Federal small business loan. His testimony at the hearing supports this claim on appeal. Tr. at 32. However, this error in the findings of fact was harmless because it 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 Applicant testified that the lien remains on the property. *Id.*

Applicant's remaining alleged errors amount to a discussion of the reasons why he incurred his financial problems and the actions he has taken to resolve them. From our review of the record, the Judge's material findings of a security concern are 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). Applicant's claims of error, in essence, amount to a disagreement with the Judge's weighing of the evidence and are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, and contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

Applicant has not identified any harmful error in the Judge's decision. 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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

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