

KEYWORD: Guideline F

DIGEST: Applicant notes that Department Counsel in the File of Relevant Material (FORM) indicated that Applicant had \$500,000 in delinquent debts. Applicant took issue with that amount. The Judge correctly found that the SOR debts totaled about \$100,000. Applicant also contends that the SOR inaccurately listed three debts as delinquent when those debts had already been paid. The Judge, however, found in favor of Applicant on those three debts. Applicant has not identified any harmful error in the Judge's decision. Adverse decision affirmed.

CASENO: 18-00420.a1

DATE: 10/26/2018

DATE: October 26, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 18-00420
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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 April 13, 2018, 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 August 20, 2018, after the hearing, Defense Office of Hearings and Appeal (DOHA) Administrative Judge Robert J. Kilmartin 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 and Analysis

Applicant is 51 years old. He reports having employment with Federal contractors since 1999 and holding a security clearance for the past 13 years with no issues. In 2013, he had surgery and was out of work for two months, which caused his debts to become delinquent. He provided character reference letters that attest to his work ethic, reliability, and trustworthiness.

The SOR listed seven delinquent debts totaling about \$100,000 and two dismissed Chapter 13 bankruptcies. The debts include a Federal tax lien for about \$85,000 and two state tax liens for about \$9,000 and \$4,200. The liens arose due to Applicant not having enough taxes withheld from his pay. He attributed the tax liens to improper advice from a tax professional. He subsequently changed his tax withholdings and entered into a repayment plan with the IRS. He provided proof of payment of three other debts and a payment plan on another. He professed his intentions to pay the tax debts, but did not submit documentation to show progress on paying them. In 2014 and 2015, he received counseling from a credit repair agency, but it is unclear what progress the agency made on the SOR debts.

The Judge found against Applicant on the Federal and state tax liens and on the bankruptcy allegations and in favor of him on the four smaller debts. Besides filing the two Chapter 13 bankruptcies that went into default, he has done nothing to address the tax delinquencies. Applicant has known about his tax problems over six years and before his surgery. He has not demonstrated that he has acted responsibly under the circumstances or that his financial problems are under control. He has not mitigated the Guideline F security concerns.

Discussion

Applicant contends that the denial of his security clearance was an error. He notes that he provided truthful and complete information throughout the adjudication process; that he submitted character reference letters attesting to his reliability; and that he has never done anything to jeopardize his career or security clearance. He explains the reasons for his delinquent debts and his efforts to resolve them. He also presents arguments for the favorable application of each of the adjudicative factors set forth in Directive, Encl. 2, App. A ¶ 2(d). Applicant’s arguments, in essence, advocate for an alternative weighing of the evidence. The presence of some mitigating

evidence does not alone compel the Judge to make a favorable security clearance 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.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant further notes that Department Counsel in the File of Relevant Material (FORM) indicated that Applicant had \$500,000 in delinquent debts.¹ In his response to the FORM, Applicant took issue with that amount. In the Decision, the Judge correctly found that the SOR debts totaled about \$100,000. Decision at 2. Applicant also contends that the SOR inaccurately listed three debts as delinquent when those debts had already been paid. The Judge, however, found in favor of Applicant on those three debts. 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."

¹ Applicant's 2015 Chapter 13 bankruptcy petition listed that he had about \$874,000 in liabilities, including about \$509,000 in non-priority, unsecured debt. FORM, Item 6. It is possible Department Counsel may have been referring to that latter figure in the FORM when he indicated Applicant had "\$500,000 in delinquent debts." However, as noted above, the Judge correctly found the SOR debts total about \$100,000.

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