

KEYWORD: Guideline F

DIGEST: Applicant requests that he be granted a security clearance for one year and, after that year, his credit history be checked to see how he is doing. The Appeal Board, however, does not have authority to grant an interim, conditional, or probationary clearance. Adverse decision affirmed.

CASE NO: 12-07700.a1

DATE: 09/21/2016

DATE: September 21, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 12-07700
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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 August 22, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 20, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 decision was arbitrary, capricious, or contrary to law. The Judge found in favor of Applicant on the Guideline E allegations and against him on several Guideline F allegations. The favorable findings were not raised as an issue on appeal. Consistent with the following, we affirm the Judge's unfavorable clearance decision.

The Judge's Findings of Fact

Applicant, who is 51 years old, has worked for his current employer since early 2015. Before that, he worked in the same job for a different company for about 16 years. He has never been married, but has a longtime fiancée. They have lived together and shared expenses for many years.

Applicant testified about two periods of unemployment stemming from a kidney transplant in 1994. The first period occurred during 2002-2005 and the second during 2011-2013. During those periods, he received about 60% of his income through a combination of short-term and long-term disability payments.

The SOR alleged 16 delinquent accounts totaling about \$26,000. In his Answer to the SOR, Applicant admitted all of the delinquent accounts. He entered into a debt-management program with a credit counseling service in March-April 2015, but was unable to maintain the \$322 monthly payment for long. He concluded that he had no other alternative than to seek bankruptcy relief. He retained the services of a bankruptcy attorney and filed a Chapter 7 bankruptcy petition. The meeting of the creditors was held in May 2016, but no other information about the bankruptcy is reflected in the documentary evidence.

The Judge's Analysis

The Judge found the evidence supported a conclusion that Applicant has a history of financial problems as well as an inability to satisfy debts. The Judge discussed the impact of Applicant's kidney transplant and gave little weight to nine medical collection accounts that totaled about \$1,300. Applicant was also given credit under two mitigating conditions.¹ In concluding that Applicant had not meet his burden of persuasion, the Judge stated:

Moreover, the pending bankruptcy case serves as a clear warning or caution sign that Applicant's overall financial situation is unstable. It's true that once he obtains a discharge he will be released from further liability on the dischargeable debts. But even so, it is too soon to tell if Applicant will be financially responsible after the

¹ Directive, Enclosure 2, ¶ 20(b), "the conditions that resulted in the financial problems were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation) and the individual acted responsibly under the circumstances;" and ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

bankruptcy case is completed.²

Discussion

Applicant contends that the Judge should have found the security concerns mitigated. He argues the Judge should have based the decision on his character, his work history, and his exposure to classified items in the past without any problems. Applicant's arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

Applicant also requests that he be granted a security clearance for one year and, after that year, his credit history be checked to see how he is doing. He stated that, if he had a second chance, he would not put his credit history in jeopardy. The Appeal Board, however, does not have authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 14-04289 at 2 (App. Bd. Sep. 9, 2015).

In the appeal brief, Applicant stated that the bankruptcy resulted in a discharge of his delinquent debts in July 2016. He also provided a credit report dated after the decision was issued. His statement about the discharge of his debt and the credit report constitute new evidence that the Appeal Board can neither receive nor consider. Directive ¶ E3.1.29.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has not identified any harmful error likely to change the outcome of the case. 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

² Decision at 7.

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