

KEYWORD: Guideline F

DIGEST: Judge did not discuss whether the totality of Applicant’s efforts at debt resolution, which included a bankruptcy discharge, established a good-faith effort to resolve debts. However, the Judge’s decision is supported by the weight of the record evidence. Adverse decision affirmed.

CASE NO: 10-03578.a1

DATE: 10/04/2012

DATE: October 4, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-03578
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 13, 2011, DOHA 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 that the case be decided on the written record. On July 24, 2012, after the close of the record, Administrative Judge Rita C. O’Brien denied Applicant’s request for a security clearance. Applicant timely appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge erred by concluding that her filing bankruptcy was not a good-faith effort to resolve debts and whether the Judge did not properly assess her case under the whole-person concept. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings of pertinent fact: Applicant is 51 years old. She is divorced. She and her mother live together, and her mother shares some of the household expenses. In 1993, Applicant was diagnosed with moderate clinical depression. She has been on various medications for depression since 1997, with varying success. Between 2009 and 2011, her medication became less effective, her depression deepened, and she was less able to deal with her financial problems. In early 2011, her doctor changed her medications, with positive results.

Applicant stated that her financial problems began in 2006, when she had back surgery and did not work for three months. Her medical disability income after the back surgery was 50 percent of her usual salary. At the same time, she had several large bills including repairs to her home and her truck. Eventually, she was unable to make the minimum payments on her credit cards, or meet her other expenses. Applicant stated that she attempted to resolve her past-due debts by working with a credit solution company, but in the end she abandoned this approach because she was paying fees to the credit solution company and no money was going to the creditors. She also tried to resolve her debts by borrowing money from relatives, withdrawing about \$45,000 from her 401(k) plan and using credit cards.

Without factoring in an account she disputes, her delinquencies totaled \$68,740 from February 2010 to November 2011. As of May 2011, Applicant had net monthly income of \$1,835. After paying her monthly expenses, she had a negative remainder of \$458. Applicant did not wish to use bankruptcy to resolve her debts, but was advised to do so by her attorney. She filed a Chapter 7 bankruptcy petition in July 2011. At that point, her monthly expenses surpassed her monthly income by \$920. The bankruptcy petition listed assets of \$174,243 and liabilities of \$248,664. Applicant successfully discharged her bankruptcy in November 2011. She completed counseling as part of the bankruptcy process. Applicant's bankruptcy petition showed gambling winnings. It did not show gambling losses and there is no other documentation showing gambling debts. There is insufficient evidence in the record to conclude that gambling contributed to Applicant's delinquencies.

The Judge reached the following conclusions: Applicant has a history of financial problems dating from at least 2006. Although Applicant's debts started to become delinquent at least six years ago, they are recent because they were resolved through bankruptcy only eight months ago. Applicant's bankruptcy is too recent to know if she will be able to remain solvent in the future. Her accumulation of significant delinquencies casts doubt on her reliability. Several events occurred that had a negative effect on Applicant's ability to pay her bills. However, Applicant has been working steadily since 2000, and her mother shares in the household expenses. It is unlikely that one financially difficult period in 2006 would, by itself, have negatively affected her finances until 2011. Full mitigation requires that an applicant act responsibly in relation to unforeseen circumstances.

Applicant made some efforts to deal with her debts through contracting a credit solution company but her other efforts involved borrowing from her family and her 401(k) which only put her further in debt. Mitigation applies because Applicant received counseling as part of the bankruptcy process, and her debts were resolved when the petition was successfully discharged. Although bankruptcy is a legitimate option to resolve overwhelming debt, it does not qualify under the Appeal Board's jurisprudence as a good-faith effort. Under the whole-person concept, over the past six years, Applicant's expenses significantly exceeded her income every month, and she accrued more than \$68,000 in delinquent debt. It appears that her recurring depression played some part, as it worsened in 2009, and likely contributed to her failure to file for bankruptcy before 2011. Applicant's bankruptcy petition was discharged only six months ago. Insufficient time has passed to be able to evaluate whether Applicant can demonstrate the financial responsibility required of those who hold security clearances.

Applicant asserts that the Judge did not fairly assess the whole-person concept in her case. Concerning the issue of good-faith efforts to resolve her debts, she notes her attempts to resolve her debts by contacting a credit solution company and by borrowing from her 401(k). She notes that these actions on her part were unsuccessful. Applicant then voices her disagreement that a "legitimate" method of bankruptcy is not a good-faith effort to resolve overwhelming debt. She argues that she understands the need for an individual to live within their means, and she indicates that she is currently meeting her financial responsibilities. Applicant has failed to establish error on the part of the Judge.

The Board has said that the mere filing of a bankruptcy petition and the successful receipt of a discharge, *standing alone*, does not satisfy the good-faith requirement of AG ¶ 20(d).¹ *See, e.g.*, ISCR Case No. 03-13768 at 4 (App. Bd. Jun. 16, 2005). Applicant does point out that she attempted to resolve her debts by other means prior to resorting to the bankruptcy action. The Judge's decision does not specifically discuss whether these efforts, in conjunction with the bankruptcy action, establish a good-faith effort to retire the debts. However, the Board does not review a Judge's decision against a standard of perfection. *See, e.g.*, ISCR Case No. 00-0311 at 2 (App. Bd. Mar. 8, 2001). The Judge did offer an analysis of Applicant's pursuit of credit solutions through a commercial company and her borrowing money from her 401(k) account and explained why, in her view, these actions did little, if anything, to meaningfully reduce Applicant's overall debt. After a review of the entire record, the Board concludes that the Judge was not required to conclude, as a matter of law, that Applicant engaged in good-faith efforts to retire or reduce her debts. Moreover, the Board concludes that the Judge's decision is adequately supported by her conclusion that, despite some evidence in mitigation related to medical conditions, Applicant's claims of mitigation are undercut by: (1) the fact that Applicant has worked steadily since 2000 with one brief exception, and her mother shares in the household expenses, (2) the notion that it is unlikely that one financially difficult period in 2006 would have negatively affected Applicant's finances until 2011, and (3) the fact that Applicant's bankruptcy discharge was so recent as to preclude a meaningful period of evaluation of her post-bankruptcy finances. The Board concludes that the Judge appropriately

¹ "[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and circumstances.

Applicant expresses her distress over a perception that she might betray the trust of her obligation to her country. The Judge's decision does not contemplate or suggest such behavior on the part of Applicant. Furthermore, the decision is issued pursuant to Executive Order 10865, which states in Section 7, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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