

KEYWORD: Guideline F; Guideline B

DIGEST: Applicant had resolved a number of his debts to include tax debts. The Judge cited evidence of financial stability. The Judge's analysis reflects a reasonable interpretation of the record evidence. Favorable decision affirmed.

CASENO: 11-13965.a1

DATE: 08/06/2013

DATE: August 6, 2013

In Re:)
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 -----) ISCR Case No. 11-13965
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

David F. Hayes, Esq., Department Counsel

FOR APPLICANT

David Allen Barnette, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 17, 2012, 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 B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 17, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact

This appeal centers around a statutory lien filed by a state against Applicant due to failure to pay workers compensation premiums on behalf of a business that Applicant ran. The Judge found that Applicant had started the company in the mid-1980s and that it was successful until the late 1990s, when it filed for bankruptcy protection. Applicant himself also filed for bankruptcy protection, because he had personally guaranteed the business’s debts. Applicant’s debts were discharged in the year after his filing.

After his discharge in bankruptcy, Applicant settled a nearly \$800,000 federal tax debt related to the business and a smaller tax debt owed to the state. However, he did not resolve the above-referenced statutory lien, in the amount of nearly \$800,000, based on a payroll tax debt that he disputed. The state eventually released the lien, and Applicant provided documentation to that effect.¹ His finances have been stable since the failure of his former business.

The Judge’s Analysis

In the Analysis, the Judge stated that Applicant had not simply relied on bankruptcy to address his financial problems but that he had resolved a number of debts, to include tax debts to the Federal Government and to the state. The Judge noted that Applicant had submitted documentary proof that his remaining debt had been released by the state and cited to evidence that Applicant had maintained financial stability in the years since his security-significant conduct.

In the whole-person analysis, the Judge noted that Applicant had held a clearance during his 24-year military career without incident or concern. He stated that Applicant’s performance of

¹We note assertions in Applicant’s reply brief to the effect that statutory liens of the sort at issue in this case do not expire by operation of law, for example through a statute of limitations, as Department Counsel intimated. Applicant argues that the state’s voluntary release of the lien indicates that the lien was improper *ab initio*, Applicant admitting that he had not paid it because he believed it to be unjust. Applicant contended at the hearing that the state workers’ compensation commission had retroactively, and improperly, imposed workers’ compensation premiums on Applicant’s business that were substantially in excess of the industry standard at the time.

official duties had contributed to national security and “helped protect the lives of U.S. personnel” serving in dangerous conditions.

Discussion

Department Counsel argues that Applicant’s refusal to pay the workers compensation tax lien for 13 years evidenced an unwillingness to meet his financial obligations. He asserts that the fact that the lien as been resolved does not negate Applicant’s past conduct showing that Applicant intentionally failed to address his financial obligation, casting doubt on his reliability, trustworthiness, and judgment.

The Judge’s analysis and conclusions reflect a reasonable interpretation of the record that was before him. We do not have to agree with a Judge’s decision to find it sustainable. *See, e.g.*, ISCR Case No. 10-03301 at 2 (App. Bd. Jun. 7, 2012).

Order

The Decision 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

