

KEYWORD: Guideline F

DIGEST: There is record evidence which supports the challenged finding regarding a Tax lien. Even if the finding was error, it would be harmless given the totality of Applicant's delinquent indebtedness. Adverse decision affirmed.

CASENO: 12-03420.a1

DATE: 07/25/2014

DATE: July 25, 2014

In Re:)
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 -----) ISCR Case No. 12-03420
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)
 Applicant for Security Clearance)
)
)

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 December 16, 2013, 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 May 15, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Joan Caton Anthony denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact contain errors and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant seeks a clearance in connection with his employment by a Government contractor. He attended college intermittently from 2004 until 2011, when he graduated with a bachelor’s degree. During college he worked during summer and academic breaks and from 2008 until 2010. After graduation he began working full time.

Applicant’s SOR alleges 12 delinquent debts, mostly for student loans totaling \$54,488. He also has an account in collection status and a federal tax lien entered against him in 2007 in the amount of \$9,539. Applicant attributed his problems in part to expenses associated with his having traveled from home to college. He stated that his current financial situation is “very tight” and that he is living paycheck to paycheck. Decision at 3. In his Response to the SOR, Applicant denied the federal tax lien. He submitted nothing to show payment of his other debts.

In his clearance interview, he stated that he had never filed federal tax returns because he believed as a student he did not have to. He provided a tax transcript from 2007 showing his wages and earnings, but he failed to provide documentation regarding taxable earning for prior years. He did have employment from 2003 to 2004 and again in 2006, when, for two months, he worked at a job in which he was compensated by commissions. He experienced periods of unemployment from June 2004 until May 2006 and again from June 2006 until June 2007.

Applicant entered into an agreement with a financial aid firm to assist in consolidating his student loan debts. He will pay \$69.49 a month for 300 months, although it is not clear from the record that he has made any payments. He provided no personal financial statement, nor did he provide evidence of his income, expenses, current debts, savings, or other income sources. He has not had financial counseling.

The Judge’s Analysis

The Judge concluded that Applicant’s circumstances raised security concerns. Though noting his claim that the tax lien was not his, the Judge cited to his credit report in support of her finding to the contrary. She stated that Applicant’s financial delinquencies are unresolved. She stated that, despite evidence that Applicant’s problems were affected by circumstances outside his

control, such as his unemployment, he had presented insufficient evidence of responsible action, such as contacting creditors, seeking forbearance, etc. She stated that, given the record before her, she was not able to conclude that Applicant's problems were under control.

In the whole-person analysis, the Judge noted that Applicant has been aware of his financial problems since at least 2011, when he was interviewed for his clearance. However, he has presented insufficient evidence of attempts to address these problems.

Discussion

Applicant challenges the Judge's finding that the tax lien is legitimately his. We note the 2011 credit report, which lists this lien among Applicant's other debts.¹ Item 9. We also note his admission to having failed to file tax returns for 2006 and 2007. Item 6, Answers to Interrogatories, at 8. This evidence supports the challenged finding. Even if the Judge erred, however, it did not likely affect the outcome of the case, in view of the magnitude of Applicant's other admitted delinquencies. The Judge's material findings of security concern are based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge's findings. *See, e.g.*, ISCR Case No. 10-00046 at 3 (App. Bd. Oct. 1, 2013).

Applicant cites to evidence of his agreement with the financial aid firm and his plan to negotiate with the creditor for the collection account. The Judge made findings about much of this evidence. However, her conclusion that Applicant has not presented evidence of actual debt repayment is consistent with the record. Her findings, and Applicant's admissions, about the extent of his financial problems, and the Judge's conclusions about the paucity of evidence in mitigation, support her adverse decision. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-13984 at 3 (App. Bd. Feb. 20, 2014).

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

¹Item 9 shows that a federal tax lien was filed against Applicant in August 2007. Applicant Exhibit (AE) A is a document asserting that the IRS has no tax lien against Applicant for tax year 2007. AE A does not on its face contradict Item 9 or the challenged finding by the Judge. Obviously, a lien filed in August 2007 would be for one or more prior tax years.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael 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