

KEYWORD: Guideline E; Guideline F

DIGEST: The Judge’s conclusion that Applicant did not produce sufficient information to mitigate the security concerns arising from the two state tax liens is sustainable. As the Board has previously stated, it is reasonable for Judge to expect applicants to present documentation showing that debts have been resolved or are being resolved. Adverse decision affirmed.

CASENO: 17-00893.a1

DATE: 05/09/2019

DATE: May 9, 2019

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In Re:)	
-----)	ISCR Case No. 17-00893
)	
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 May 16, 2018, 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 February 14, 2019, after the hearing, Administrative Judge Noreen A. Lynch 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. The Judge’s favorable findings under Guideline E were not raised as an issue on appeal and are not discussed further below. Consistent with the following, we affirm.

The Judge’s Pertinent Findings of Fact and Analysis

Applicant, who is 58 years old, has worked for her current employer since 2015. Before her current employment, she worked as a contractor and has held a security clearance for about 15 years. The Judge found in favor of Applicant on three of six Guideline F allegations. She found against Applicant on two state tax liens totaling over \$20,000 and a medical debt of \$560.

Applicant experienced periods of unemployment, including while working for her current employer. She indicated that she received bad advice from an accountant about the filing of her self-employment tax returns. She also suffered a stroke at work that was not covered by health insurance.

Applicant admitted that she was indebted for a state tax lien of about \$7,300. While two state tax liens are alleged in the SOR, she claimed she has only one state tax lien in the approximate amount of \$13,100. She provided a 2018 state document showing she owes a balance of about \$4,700 for tax year 2007 and about \$9,000 for tax year 2009. She attributed the past-due taxes to inaccurate tax filings by her accountant. In 2011, she began making \$400 payments, but it was not clear from the record to whom she was making those payments. At one point, checks torn in half were returned to her. In 2018, she agreed to a 60-month payment plan with the state. Under that agreement, she was to make a initial payment of \$1,374 and then monthly payments of \$235. She has not started making the payments because her husband had a massive heart attack, and she is the only one employed.

Applicant stated that she was making payments on the delinquent medical account, but provided no proof of those payments. In her post-hearing submission, she provided a receipt for \$480; however, it was not clear to whom the payment was made. She also volunteered that she owed about \$8,000 in Federal taxes for 2017 and an unspecified amount in state taxes for that same year. She again attributed the 2017 tax delinquencies to her old accountant; however, she has hired a new accountant.

While Applicant experienced conditions beyond her control, she has not acted responsibly to address her debts. More specifically, she did not produce sufficient information to show that she

has been proactive in her actions. While she settled a Federal tax lien, she has not started payments on others. She has not shown that her financial problems are under control.

Discussion

In her appeal brief, Applicant contends that she made payments towards the state tax liens through a collection agency and that she settled the medical debt through a third-party corporation. The Judge discussed those claimed payments in the decision, indicating for both the state tax liens and the medical debt that it was not clear to whom Applicant made the payments.¹ The Judge's findings regarding state tax liens are generally consistent with the evidence in the record. They are based upon substantial evidence or constitute reasonable inferences therefrom. *See, e.g.*, ISCR Case No. 17-01181 at 4 (App. Bd. Apr. 30, 2018). Additionally, the Judge's conclusion that Applicant did not produce sufficient information to mitigate the security concerns arising from the two state tax liens is sustainable. As the Board has previously stated, it is reasonable for Judge to expect applicants to present documentation showing that debts have been resolved or are being resolved. *See, e.g.*, ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to establish harmful error. *See, e.g.*, ISCR Case No. 17-02463 at 2 (App. Bd. Sep. 10, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the 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 Judge's adverse 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* at 528. *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 Some comments regarding the claimed payments merit noting.

a. In her post-hearing submission, Applicant stated that she was providing a receipt from a collection agency for \$448 showing the medical debt in SOR ¶ 1.e was paid. The Judge found "Applicant provided a receipt for \$480, but it was not clear to whom it was paid." Decision at 3. In the record, we are unable to find a receipt for either \$448 or \$480.

b. In discussing the \$400 state tax lien payments, the Judge stated, "but it was not clear from the record that the payment was going to the IRS." Decision at 3. At the hearing, Applicant indicated that payments were going to an unspecified collection company. Tr. at 22. In the appeal brief, Applicant states the payments were going to a collection agency, not the IRS.

Even though the Judge may have erred in failing to include the receipt for either \$488 or \$480 in the record and may have erred in referring to the IRS regarding the state tax lien payments, these were harmless errors because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). As discussed above, the unresolved state tax liens are sufficient to sustain the Judge's unfavorable clearance decision.

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