

KEYWORD: Guideline F

DIGEST: The thrust of the Judge’s decision is that Applicant did not act responsibly under the circumstances to resolve her financial problems. Applicant’s financial problems covered multiple years. The state filed her missing state tax returns for certain years and initiated action to collect her past-due state taxes. Additionally, Applicant acknowledged that completing her 2017 security clearance application spurred her on to resolve her tax filing deficiency. The Judge noted that an applicant’s resolution of his or her financial problems does not compel a favorable security clearance adjudication and that the timing of corrective action is an important factor to consider because applicants who wait until their security clearances are in jeopardy before resolving financial problems may be lacking in the judgment expected of those with access to classified information. Adverse decision affirmed.

CASENO: 18-00747.a1

DATE: 11/13/2019

DATE: November 13, 2019

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In Re:)	
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-----)	ISCR Case No. 18-00747
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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 March 26, 2018, 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 hearing. On August 30, 2019, after the hearing, Administrative Judge Candace Le'i Garcia 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 in her appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant, who is in her 40s, has worked for Federal contractors since about 1997. She was unemployed from about May to December 2007 and for brief periods in 2015 and 2017. She has worked in her current position since early 2017. She is married with a minor child, adult child, and adult stepchild. She was first granted a security clearance in about 1996.

The SOR alleged that Applicant failed to file her Federal income tax returns for 2012-2016 in a timely manner and that she owes about \$6,200 in state income taxes for 2012 and 2013. She admitted both SOR allegations. She attributed her tax filing deficiency to the unforeseen firing of her husband from his long-time job, which resulted in their annual income dropping from about \$200,000 to \$90,000. She also assisted her stepson by paying his legal fees that arose from criminal charges and by assisting him and his mother with their housing for a period. Additionally, Applicant noted she had health problems, her children experienced bullying and assaults, and one child had behavioral issues. She testified she notified Federal and state tax authorities about the circumstances impeding her ability to address her tax issues and that she was overwhelmed by those circumstances.

Applicant did not prioritize her legal obligation to file her tax returns. She believed that she did not owe any taxes on the unfiled tax returns and thought she was only delaying the receipt of tax refunds. She did not consider the impact the tax filing deficiencies would have on her security clearance. In her security clearance application (SCA), she disclosed that she traveled overseas in 2014 and 2015 for pleasure. She filed her 2012-2017 Federal and state income tax returns in January 2019. She acknowledged that completing her 2017 SCA prompted her to file her tax returns.

Applicant testified that her 2012 and 2013 state tax returns were filed by the state after she failed to file them. She elected to pay the state tax delinquency of about \$8,000 to \$9,000 through

a payment plan that began in December 2016. In 2018, the state also filed her delinquent 2014 and 2015 state tax returns and added the past-due state taxes for those years to her payment plan. Subject to possible IRS adjustments, Applicant had no outstanding state tax liability by January 2019.

Applicant was not late in filing her 2018 Federal and state income tax returns. Her and her husband's annual income was back to approximately \$200,000. They have about \$6,200 in savings and about \$140,000 of equity in their home. She described her current financial situation as "pretty good." Decision at 4. They have no other delinquent debts. Applicant's supervisor testified she is trustworthy individual who exercises good judgment. Another witness testified that she is a dedicated worker and reliable individual.

The Judge's Analysis

Applicant is working to provide the IRS additional documentation to complete the filing of her 2014 Federal income tax return. Her financial problems were not infrequent and did not happen so long ago or under circumstances making them unlikely to recur. Conditions beyond her control contributed to her financial problems, but she did not take prompt action to resolve them. The mere filing of past-due tax returns or resolution of delinquent debts does not compel a favorable security clearance adjudication. Although certain mitigating conditions were established, Applicant's problems continue to cast doubt on her current reliability, trustworthiness, and good judgment.

Discussion

Applicant contends that the Judge gave insufficient weight to her mitigating evidence and did not properly apply the whole-person concept. In her brief, she reiterates the circumstances that the Judge discussed for her financial problems and argues those circumstances were overwhelming and are unlikely to recur. She also asserts, among other matters, that she made a valiant effort to resolve her financial problems, has learned from this experience, and has filed her delinquent returns. We do not find Applicant's arguments persuasive.

The thrust of the Judge's decision is that Applicant did not act responsibly under the circumstances to resolve her financial problems. Applicant's financial problems covered multiple years. The state filed her missing state tax returns for certain years and initiated action to collect her past-due state taxes. Additionally, Applicant acknowledged that completing her 2017 security clearance application spurred her on to resolve her tax filing deficiency. The Judge noted that an applicant's resolution of his or her financial problems does not compel a favorable security clearance adjudication and that the timing of corrective action is an important factor to consider because applicants who wait until their security clearances are in jeopardy before resolving financial problems may be lacking in the judgment expected of those with access to classified information. *See, e.g.,* ISCR Case No. 16-01211 at 4 (App. Bd. May 30, 2018).

Applicant's arguments fail to show the Judge committed any harmful error. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the

favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

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."

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