

KEYWORD: Guideline F

DIGEST: We give due consideration to the Hearing Office case that Applicant has cited in support of his arguments, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. Adverse decision affirmed.

CASENO: 18-01045.a1

DATE: 05/14/2019

DATE: May 14, 2019

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 6, 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 decision on the written record. On March 5, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant is 30 years old and unmarried. He served in the military and was granted a security clearance in 2006. Following his military discharge in 2012, he was unemployed for about a year before attending college. For portions of 2015 and 2016, he worked overseas. For portions of 2016 and 2017, he was unemployed as a full-time student. He has not yet earned a degree. In 2017, he began working for a defense contractor.

The SOR alleged that Applicant failed to file timely his Federal tax returns for 2014-2016 and that he had four delinquent debts totaling over \$19,000. He filed his 2014 Federal tax return in April 2016. He paid one of the alleged debts in 2016 and has repayment plans in place for two other debts. In August 2018, he filed his Federal tax returns for 2015-2017. He thought that he could not file his 2015-2017 Federal tax returns until he paid a \$1,000 debt owed to a former employer. After consulting with a tax preparer, he was advised the delinquent tax returns could be filed without first paying the debt.

The Judge found in favor of Applicant on three alleged debts and against him on the Federal tax-filing allegation and a \$328 debt owed to the U.S. Government. His Federal tax returns for 2015 and 2016 were not filed until after he received the SOR. “Even where tax problems have been corrected and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant’s trustworthiness in light of longstanding prior behavior evidencing irresponsibility.” Decision at 10, *citing* ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). Applicant has yet to show a track record of complying with tax-filing deadlines. The Judge also noted that Applicant disputes the \$328 U.S. Government debt due to his lack of knowledge about it, but he submitted no documentation establishing it is not his responsibility. Furthermore, he has not shown any effort to investigate that debt, which is on his credit report.

### **Discussion**

Applicant contends that the Judge did not consider all of the record evidence and did not properly apply the facts of the case to the mitigating conditions. He argues, for example, that the Judge disregarded evidence that shows he filed all of his tax returns and hired a tax professional to resolve other outstanding issues. He further claims the Judge erred by failing “to realize the steps

[he] has taken to remedy his past tax issues” and erred by not concluding Mitigating Condition 20(g) was fully applicable.<sup>1</sup> Appeal Brief at 9-10. Applicant’s arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-03978 at 3-4 (App. Bd. Mar. 6, 2019). We give due consideration to the Hearing Office case that Applicant has cited in support of his arguments, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* The Judge discussed Mitigating Condition 20(g) and noted Applicant still has tax debt and failed to disclose his tax situation on his security clearance application. She also considered applicable case law. There is no reason to disturb her analysis under 20(g).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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, 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.”

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<sup>1</sup> Directive, Encl. 2, App. A ¶ 20(g) states, “the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.”

**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