

KEYWORD: Guideline F

DIGEST: We note that Applicant’s appeal brief fails to identify any documentary evidence of record that supports his claim that his 2015 Federal income tax return was submitted on or before its due date. As the Appeal Board has previously noted, it is reasonable for a Judge to expect applicants to present documentation showing their financial problems have been resolved or are being resolved. We find no error in the Judge’s conclusion that Applicant failed to file his 2015 Federal income tax return in a timely manner. Furthermore, Applicant says “Applicant’s federal tax return for tax year 2015 was in fact timely filed and evidence of such, that would have been sufficient for AJ, can be provided upon reviewed opportunity to do so.” Appeal Brief at 5. However, the Board has no authority to remand a case for the taking in of new evidence. Adverse decision affirmed.

CASE NO: 18-01102.a1

DATE: 12/20/2019

DATE: December 20, 2019

In Re:	)	
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Applicant for Security Clearance	)	
	)	ISCR Case No. 18-01102

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Austin J. Lewis, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 21, 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 October 3, 2019, after the hearing, Defense Office of Hearings and Appeal (DOHA) Administrative Judge Mark Harvey 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.

As amended, the SOR listed ten Guideline F allegations. The Judge found against Applicant on five of those allegations. Of those five allegations, Applicant denied a 2015 tax filing deficiency allegation; admitted three of the delinquent debts, including a large Federal tax debt; and was unsure of a fourth debt that was past-due for about \$290. The Judge summarized the case as follows:

Applicant has known that the Internal Revenue Service (IRS) sought additional taxes from him for tax years 2009 and 2010 since 2013, and his tax debt remains unresolved. He did not timely file his federal income tax return for 2015. He has three other unresolved delinquent debts. He did not establish that he was unable to make greater progress resolving his delinquent debts. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied. [Decision at 1.]

In 2018, an IRS issued a letter stating that Applicant’s Federal tax debt totaled about \$85,000 and his income tax returns for 2014, 2015, and 2017 had not been received. The Judge noted that Applicant stated he was unwilling to settle with the IRS because that agency keep changing the amount owed and had not acted in good faith. However, he believed he was making progress to resolve his Federal tax debt because he recently requested the appointment of an IRS tax advocate from whom he wants to obtain a settlement amount and then negotiate an offer in compromise.

#### Applicant’s 2015 Federal Income Tax Return

In his appeal brief, Applicant contends the Judge erred in concluding that he failed to file his 2015 Federal tax return in a timely manner. He asserts the record evidence established that he timely filed his 2015 Federal income tax return but the IRS failed to process that return “for some time.” Appeal Brief at 5.

In the decision, the Judge addressed Applicant’s alleged tax filing deficiency by stating:

Applicant said he timely filed the tax returns, and he had copies of them. (Tr. 36-37) I asked Applicant to provide copies of the tax returns for 2014, 2015, and 2015 [sic].

(Tr. 65) He said he was going to ask his accountant when she submitted those tax returns. (Tr. 65) He sent a registered mail receipt showing something was submitted to the IRS on April 15, 2015, and said this was his 2014 federal income tax return. (Tr. 66, 73; AE A at 2) I have credited Applicant with timely filing his federal income tax return for tax year 2014. He said he was unaware that the IRS had not received his tax returns until 2018 when he received the IRS information at his bankruptcy. (Tr. 37) He said he “reproduced” the tax returns and received the refunds. (Tr 37). [Decision at 4.]

In his analysis, the Judge stated that, without a statement from an accountant or an email showing when Applicant’s 2015 Federal income tax return was filed or sent to the IRS, he declined to credit him with filing that return in a timely manner. We note that Applicant’s appeal brief fails to identify any documentary evidence of record that supports his claim that his 2015 Federal income tax return was submitted on or before its due date. As the Appeal Board has previously noted, it is reasonable for a Judge to expect applicants to present documentation showing their financial problems have been resolved or are being resolved. *See, e.g.*, ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). From our review of the record, we find no error in the Judge’s conclusion that Applicant failed to file his 2015 Federal income tax return in a timely manner. Furthermore, Applicant says “Applicant’s federal tax return for tax year 2015 was in fact timely filed and evidence of such, that would have been sufficient for AJ, can be provided upon reviewed opportunity to do so.” Appeal Brief at 5. However, the Board has no authority to remand a case for the taking in of new evidence. *See, e.g.*, ISCR Case No. 12-10934 at 2 (App. Bd. Mar.21, 2016).

#### Applicant’s Delinquent Debts

In his appeal brief, Applicant contends that he acted responsibly in addressing his delinquent debts. He notes, for example, that his delinquent Federal tax debt initially arose when a surprising shift occurred in his employment status (*i.e.*, the IRS determined he was not an independent contractor (1099 filer) but rather an employee (W-2 filer)); that his ex-wife’s financial irresponsibility contributed to his problems; that he consulted with an accountant and two bankruptcy attorneys to determine the best course of action to pursue; that he filed Chapter 13 bankruptcy and utilized financial counseling to control his financial situation; that some of his debts were charged off during the bankruptcy; that he withdrew from the bankruptcy after the IRS keep changing the amount due; and that, even though he withdrew from the bankruptcy, he continued to adhere to its terms by setting aside \$714 per month to apply toward his creditors. Regarding the non-tax debts, he also asserts he contacted creditors in an attempt to settle the accounts after the bankruptcy, resolved some accounts, and established a payment plan for another. He argues his efforts were sufficient to mitigate the alleged debts.

Applicant’s arguments are not persuasive. In the decision, the Judge addressed the matters that Applicant is raising on appeal. The Judge concluded that Applicant’s change in employment status and his ex-wife’s financial irresponsibility were conditions beyond his control that adversely affected his finances but he failed to establish he acted responsibly under the circumstances. The Judge also concluded that Applicant did not establish: that his financial problems were under

control, that he was unable to better address his delinquent taxes and other debts, that he diligently attempted to set up payment plans to address his three non-tax debts or his taxes that he learned were past-due in 2013, and that he did not provide proof of a track record of payments on his delinquent debts. From our review of the record, the Judge's conclusions regarding the delinquent debts are sustainable. Applicant's arguments, in essence, amount to a disagreement with the Judge's weighing of the evidence and are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, and contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

### Conclusion

Applicant has not identified any harmful error in the Judge's decision. The Judge examined the relevant evidence 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, 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