

KEYWORD: Guideline F

DIGEST: Applicant failed to file timely her 2008-2009 and 2011-2015 Federal income tax returns and had delinquent Federal taxes totaling over \$300,000 for 2008, 2010, 2011, 2012, 2014, and 2015. Adverse decision affirmed.

CASENO: 18-01447.a1

DATE: 05/15/2019

DATE: May 15, 2019

In Re:)	
)	
-----)	ISCR Case No. 18-01447
)	
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 August 24, 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 March 6, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan 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, who is 62 years old, has been working for her current employer since 2016. Over the past 20 years, she held security clearances while working for other employers. She is married with two minor children and an adult step-son.

The SOR alleged that Applicant failed to file timely her 2008-2009 and 2011-2015 Federal income tax returns; had delinquent Federal taxes totaling over \$300,000 for 2008, 2010, 2011, 2012, 2014, and 2015; had a second mortgage past-due for about \$24,100; had a credit card account past-due for \$4,000; had a line of credit past-due for about \$2,100; had two Federal tax liens totaling over \$120,000; had a collection account over \$25,900; and had two other delinquent debts totaling less than \$1,000. She encountered financial problems when her husband, who was earning about \$150,000 annually, became unemployed in 2008. She is now the sole source of income for the family and has an annual income of about \$191,000. She indicated that they are unable to pay their current debts on her income. Her household operates with a negative monthly balance of about \$5,600. At the time of the hearing, her husband had received an offer for a job with an annual salary of about \$154,000.

Applicant has filed the delinquent tax returns. During most of those years, she operated a business that ran into tax problems due to inadequate record keeping and reliance on her husband to file the tax returns. She discovered the tax issues around the time she submitted her security clearance application in 2016. She admits she owes Federal taxes, but disputes the amount. In 2016, she and her husband hired a tax attorney to help file their tax returns and negotiate a settlement with the IRS. About a month before the hearing, they were unsuccessful in their efforts to contact the attorney. They hired a tax relief company about two weeks before the hearing. The tax relief company will soon negotiate a settlement agreement with the IRS. She intends to pay her Federal tax debt.

Applicant claimed the past-due second mortgage, the credit card account, and the line of credit were combined into one loan that she is making payments towards and is now current. She paid the two smallest debts and does not recall the Federal tax liens. The \$25,900 collection account was entered on her credit report in error and has been removed. She is taking a more active role in

the family finances. She plans to begin resolving her debts when her husband becomes employed again. She has received accolades for her excellent job performance.

The Judge's Analysis

Applicant's financial problems are ongoing. Although she has filed her delinquent tax returns, a significant Federal tax debt remains. She and her husband recently hired a tax firm to help with disputing the amount of the Federal tax debt and in instituting a repayment plan, but the status of that debt is uncertain. Given her current financial situation, the tax debt is not likely to be resolved in the near future. Her husband's unemployment does not explain her former tax filing delinquencies. She has not established that she acted responsibly under the circumstances. She is just beginning to deal with her Federal tax debt and other financial problems. The Judge found in favor of Applicant on the two paid debts, two Federal tax liens, and collection account that was listed in error on her credit report. The Judge found against her on the remaining SOR allegations.

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. In doing so, she highlights such matters as the circumstances beyond her control that contributed to her financial problems and her efforts to resolve those problems, including her hiring of a tax firm to establish an IRS payment plan. The Judge, however, addressed many of those matters in her decision. Applicant's arguments 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 her arguments, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.*

Applicant has not established that the Judge committed any harmful error. 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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