

KEYWORD: Guideline F

DIGEST: Applicant’s Counsel argues the Judge “fails to realize that [Applicant’s] wages have no longer been garnished bolstering her testimony that tax debts have been paid.” As the Judge found and the evidence establishes, Applicant testified that the garnishment of her pay was for a state tax debt, which was not alleged in the SOR. The termination of the garnishment for a state tax debt does not establish the Federal tax debt has been paid. Applicant’s Counsel also states, “There is no evidence to show that [Applicant] owes any federal or state taxes and her testimony belies the statement of the Administrative Judge that she does.” This latter statement is not accurate. Applicant submitted a post-hearing exhibit from the IRS that reflected she owed over \$12,000 in Federal taxes, penalties, and interest for 2010 as well as over \$12,000 for 2011 and over \$4,000 for 2009. Adverse decision affirmed.

CASENO: 17-03809.a1

DATE: 08/13/2019

DATE: August 13, 2019

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In Re:)	
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-----)	ISCR Case No. 17-03809
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Mark A. Myers, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 17, 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 June 11, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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 55 years old, has been working for her current employer since 2011. Over the years, she has had a successful career and has been lauded for her work performance. Her first husband passed away in 2012. Until his death, he took care of the finances. She indicated that it took her over two years after his passing to begin to resolve her financial issues. Her testimony was often vague as to her past and current financial situation.

As amended, the SOR alleged that Applicant failed to file timely her Federal and state income tax returns from 2010 to 2016; she owed about over \$21,000 in past-due Federal taxes for 2010, 2011, and 2015; and she had 18 delinquent medical bills totaling over \$10,000. Applicant provided documentation showing her 2015 and 2016 Federal income tax returns were filed late. Noting that she prepared some tax returns on her own and she also hired a tax preparer, she did not know whether all of her delinquent Federal tax returns had been filed. She believed her state income tax returns for 2010 through 2015 had been filed, but only documented the filing of her 2016 state tax return. Applicant testified she thought that her past-due Federal tax debt had been paid through tax refund withholdings, but IRS documentation showed she still owed over \$25,000 in Federal taxes for 2010 and 2011. However, her 2015 Federal tax debt was resolved.

Applicant admitted two of the delinquent medical debts but supplied no evidence showing those debts had been paid. She denied the other delinquent medical debts, claiming they were successfully disputed because they no longer appeared on her credit report. For some of the denied debts, she provided dispute letters, but the amounts in those letters did not match the debts in question. She failed to provide evidence to establish the denied debts were successfully disputed. Her delinquent medical debts remain unresolved.

Applicant did not provide documentation showing she entered into a payment arrangement with the IRS. The death of her husband caused some of her financial problems; however, she was unclear what actions she had taken or would take regarding them. She did not present sufficient evidence to show that she acted responsibly in resolving her financial problems. None of the Guideline F mitigating conditions apply in this case.

Discussion

Applicant’s Counsel contends the Judge “fails to make mention that one of the root causes of the financial issues is the untimely and unanticipated death of Applicant’s husband.” Appeal Brief at 8. He further states “[m]any of the debts were caused by the [medical] treatment and eventual death of Applicant’s husband; yet this factor is noted nowhere in the decision.” Appeal Brief at 9. He also argues those medical debts have disappeared from Applicant’s credit reports. We do not find these arguments persuasive. First, the Judge made findings and conclusions about the impact of the death of Applicant’s first husband on her finances but determined that she did not act responsibly in addressing her financial problems since his passing. Second, the thrust of the Judge’s decision regarding the denied medical debts is that Applicant failed to provide sufficient documentation to substantiate any disputes. *See* Directive, Encl. 2, App A. ¶ 20(e). Third, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. *See, e.g.*, ISCR Case No. 18-00096 at 2, n.1 (App. Bd. Apr. 4, 2019). In short, Applicant’s Counsel has not established that the Judge erred in his analysis of the medical debts.

Applicant’s Counsel argues the Judge “fails to realize that [Applicant’s] wages have no longer been garnished bolstering her testimony that tax debts have been paid.” Appeal Brief at 11, citing Tr. at 36. As the Judge found and the evidence establishes, Applicant testified that the garnishment of her pay was for a state tax debt, which was not alleged in the SOR. Decision at 3; Tr. at 36 and 63; and Applicant’s Exhibits (AE) F and H. The termination of the garnishment for a state tax debt does not establish the Federal tax debt has been paid. Applicant’s Counsel also states, “There is no evidence to show that [Applicant] owes any federal or state taxes and her testimony belies the statement of the Administrative Judge that she does.” Appeal Brief at 5. This latter statement is not accurate. Applicant submitted a post-hearing exhibit (AE P) from the IRS that reflected she owed over \$12,000 in Federal taxes, penalties, and interest for 2010 as well as over \$12,000 for 2011 and over \$4,000 for 2009.¹

Applicant’s Counsel further contends that the Judge did not consider all of the record evidence and did not properly apply the mitigating conditions and whole-person concept. He argues, for example, the Judge did not take into account Applicant’s trustworthiness, honesty, or integrity, including her excellent work performance. His arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they 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. 17-02488 at 3 (App. Bd. Aug. 30, 2018). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* at 3-4.

¹ The 2009 Federal tax debt was not alleged in the SOR. In a footnote, the Judge noted that he would not consider that debt for disqualifying purposes, but could consider it in assessing the mitigating evidence. Decision at 4, n.1.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. As we have previously stated, a person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes 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, 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