

KEYWORD: Guideline F

DIGEST: Applicant also states that tax professionals have told him that it is not illegal to owe taxes to the Government so long as he is making an effort to pay them. To the extent that he may be implying that his security clearance adjudication is a determination of guilt or innocence of a crime, such an assertion is incorrect. A clearance decision is solely a determination whether it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Adverse decision affirmed.

CASE NO: 19-00268.a1

DATE: 12/12/2019

DATE: December 12, 2019

_____)	
In Re:)	
)	
-----)	ISCR Case No. 19-00268
)	
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 15, 2019, 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 September 18, 2019, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant filed a Chapter 13 bankruptcy petition in 2007 that was later dismissed and that he had six delinquent debts. The Judge found in favor of Applicant on the bankruptcy allegation and on four of the six alleged debts. Those favorable findings have not been raised as an issue on appeal.

The Judge found against Applicant on a Federal and state tax obligation. In 2018, Applicant estimated that he owed \$20,000 to the IRS. Post-hearing, Applicant indicated that the IRS informed him that he owes more than \$60,000. He further stated that he submitted to the IRS a form to begin making payment arrangements but only provided the Judge a blank copy of that form. Over the years, Applicant’s state filed tax liens against him totaling about \$90,000 that are no longer listed on his credit reports. However, he admitted that he owes the state more than \$111,000 and indicated that he is reaching out to the state but it still has not sent him any forms.

In concluding that disqualifying conditions applied, the Judge stated:

Applicant has a history of financial problems, including bankruptcy, unpaid taxes, and delinquent debts. Except for about six months of unemployment, he was consistently employed, with annual income in excess of \$100,000. He bought a \$50,000 sports car [in 2010], but failed to pay all of his taxes. [Decision at 4-5.]

The Judge also noted that Applicant purchased an SUV for \$71,000 in 2011, stopped paying on the sports car and SUV, and stored the sports car at a friend’s house, in part, so that the creditor could not repossess it. Applicant eventually settled the sports car debt and the SUV was repossessed. In his whole-person analysis, the Judge considered Applicant’s honorable military service but concluded the security concerns arising from the \$170,000 that he owes in Federal and state income taxes were not mitigated.

In his appeal brief, Applicant contends the Judge’s whole-person analysis does not paint an accurate picture of him. He also argues that he is filing and paying his current taxes, that he had been paying past-due taxes by refund forfeitures and payroll deductions, and that he has resolved a large child support arrearage. His arguments, however, fail to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

Applicant also states that tax professionals have told him that it is not illegal to owe taxes to the Government so long as he is making an effort to pay them. To the extent that he may be implying that his security clearance adjudication is a determination of guilt or innocence of a crime, such an assertion is incorrect. *See, e.g.*, ISCR Case No. 02-07555 at 4 (App. Bd., Jul. 19, 2004). A clearance decision is solely a determination whether it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. *See* Directive ¶ 3.2. Applicant also notes that he has lost his employment since the Judge's decision. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

Applicant has failed to establish 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.

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