

KEYWORD: Guideline F

DIGEST: In the appeal brief, Department Counsel challenges the Judge's findings that Applicant made a claim of identity theft regarding a non-tax debt and that he disputed the three non-tax debts. Specifically, Department Counsel contends the record does not contain evidence supporting those findings. We disagree. Applicant's response to the SOR and AE A and B support the Judge's challenged findings. Favorable decision affirmed.

CASENO: 18-01751.a1

DATE: 04/05/2019

DATE: April 8, 2019

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In Re: )  
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Applicant for Security Clearance )  
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ISCR Case No. 18-01751

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Andrew H. Henderson, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 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). On February 5, 2019, after the hearing, Administrative Judge Darlene D. Lokey Anderson granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge’s findings of fact are based on record evidence and whether the Judge’s decision is arbitrary and capricious. Consistent with the following, we affirm.

The SOR alleged that Applicant failed to file his Federal income tax returns for 2011-2016 as required and had four delinquent debts totaling about \$13,000, including a Federal tax debt of about \$11,600. In responding to the SOR, Applicant admitted tax filing and paying deficiencies, but denied the three non-tax debts. The Judge found that Applicant’s wife was the primary earner in the family for many years, while Applicant took care of the children. They struggled financially. During those years, Applicant was not involved in the family finances, but at some point he learned their income taxes were not filed. Decision at 2, AE C, and Tr. at 27-28.

In his appeal brief, Department Counsel indicates that Applicant’s Federal income tax returns were filed about a year or more before the SOR was issued. More specifically, Department Counsel notes that Applicant’s Federal income tax returns were filed as follows: 2011 in October 2012; 2012 in December 2015; 2013 and 2014 in July 2017; 2015 in August 2017; and 2016 in September 2017. Appeal Brief at 4. Applicant filed his 2017 Federal income tax return on time. Applicant Exhibit (AE) C and Tr. at 23. He contacted the IRS regarding his delinquent taxes about six months before the SOR was issued. Government Exhibit (GE) 2, IRS letter dated April 24, 2018. He also submitted a request to initiate an installment agreement with the IRS before the issuance of the SOR, and his installment payments are set up to be automatically deducted from his checking account. GE 2, AE C, and Tr. at 27-28.

In the appeal brief, Department Counsel challenges the Judge’s findings that Applicant made a claim of identity theft regarding a non-tax debt and that he disputed the three non-tax debts. Specifically, Department Counsel contends the record does not contain evidence supporting those findings.<sup>1</sup> Appeal Brief at 5. We disagree. Applicant’s response to the SOR and AE A and B support the Judge’s challenged findings.

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<sup>1</sup> In the appeal brief, Department Counsel also contends that Applicant “chose to strategic default on a mortgage” in June 2008 and cites to Tr. 34-39 in support of that claim. Appeal Brief at 4-5 and 16. The record, however, does not support that the assertion that Applicant’s conduct was a “strategic default,” which we interpret as a situation in which an applicant has the means to make mortgage payments but willingly decides to default on those payments for economic or other reasons. While Applicant testified that “we walked away from our home,” he also stated they took that action because “[w]e were not gonna make it” and acknowledged they could not continue paying the mortgage when its rates went up. Tr. at 35.

The remainder of Department Counsel’s arguments amount to a disagreement with the Judge’s weighing of the evidence.<sup>2</sup> His disagreement, however, is not enough to establish that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016). Department Counsel has not established that the Judge committed any harmful error. The decision is sustainable on the 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

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<sup>2</sup> Department Counsel makes an argument that the Appeal Board has repeatedly rejected, *i.e.*, “Mitigating Condition 20(g) must be read in concert and harmony with the overall parameters of analysis set forth by the Appeal Board.” Appeal Brief at 9. This is not accurate. The Appeal Board and Hearing Office are creatures of the Directive. It is mistaken to believe that the guidelines are somehow inferior to Appeal Board decisions. More succinctly, the provisions of the Directive, including the guidelines, are controlling. *See, e.g.*, ISCR Case No. 17-01213 at 4, n.2 (App. Bd. Jun. 29, 2018); ISCR Case No. 16-03187 at 4, n.4 (App. Bd. Aug. 1, 2018); ISCR Case No. 17-00944 at 3 (App. Bd. Feb. 15, 2019); and, most recently, ISCR Case No. 14-02149 at 4, n.3 (App. Bd. Mar. 5, 2019).