

KEYWORD: Guideline F

DIGEST: Applicant’s contention that the Judge’s decision was “solely based” on dated financial deficiencies is simply not accurate. The Judge’s adverse findings include recent financial concerns, such as Applicant’s past-due Federal taxes for 2017 and his past-due state taxes for 2014, 2016, and 2017. Also, past and present financial deficiencies are relevant considerations in assessing an applicant’s security clearance eligibility. Adverse decision is affirmed.

CASE NO: 18-02980.a1

DATE: 02/05/2020

DATE: February 5, 2020

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In Re:	)	
	)	
-----	)	ISCR Case No. 18-02980
	)	
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 June 20, 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 November 13, 2019, after the hearing, Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR listed 12 allegations. The Judge found against Applicant on six of them. In responding the SOR, Applicant admitted each allegation that the Judge found against him. The Judge summarized the case as follows:

Applicant has owed federal and/or state income taxes since he filed his tax returns for tax year 2014 in 2016. He made substantial progress on his non-tax debts; however, it was mostly after the statement of reasons (SOR) was issued. In the previous 15 years, he filed bankruptcy twice, had three expensive vehicles repossessed, and short sold his residence. Financial considerations security concerns are not mitigated. Eligibility access to classified information is denied. [Decision at 1.]

Applicant’s appeal brief contains documents and assertions that are not included in the record. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends that the Judge’s decision “was solely based on my financial issues that were 10 to 15 years old.” Appeal Brief at 1. He noted that he was not required to disclose his prior bankruptcy filings on his security clearance application due to their age and stated he “didn’t realize [his] financial history from 10 to 15 years ago would be in question.” *Id.* These assertions are not persuasive. First, Applicant’s contention that the Judge’s decision was “solely based” on dated financial deficiencies is simply not accurate. The Judge’s adverse findings include recent financial concerns, such as Applicant’s past-due Federal taxes for 2017 and his past-due state taxes for 2014, 2016, and 2017. Second, past and present financial deficiencies are relevant considerations in assessing an applicant’s security clearance eligibility. *See, e.g.*, Disqualifying Condition 19(c), which provides “a history of not meeting financial obligations” could raise a security concern and may be disqualifying. Directive, Encl. 2, App. ¶ 19(c). Third, to the extent that Applicant is raising a due process issue, the SOR gave Applicant adequate notice that his prior bankruptcies would be considered in determining his security clearance eligibility. Finally, we note the Judge properly cited to ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004) for the proposition that he could consider certain non-alleged financial deficiencies for limited purposes – such as in assessing an applicant’s credibility; evaluating an applicant’s evidence of extenuation, mitigation, or changed circumstances; determining whether an applicant has demonstrated successful rehabilitation; and conducting a whole-person assessment. Applicant has failed to show the Judge erred in his consideration of Applicant’s past financial delinquencies.

The balance of Applicant’s argument amounts to a challenge to the way in which the Judge weighed the evidence. For example, he challenges the Judge’s conclusion that he did not take

significant steps to resolve his financial problems until the SOR was issued. He argues that the SOR issuance coincided with his efforts to address his financial problems so that his son could qualify for an educational loan. His arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient 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. 15-07277 at 3 (App. Bd. Apr. 26, 2017).

Applicant requests that he be granted a temporary security clearance and then provide him an opportunity to updated his financial status. Applicant has failed to establish that the Judge committed any harmful error or that he should be granted a conditional security clearance under Directive, Encl. 2, App. C. 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