

KEYWORD: Guideline F; Guideline G

DIGEST: Since we only instructed the Judge to reopen the record on remand for the purpose of providing the parties the opportunity to submit evidence on the tax filing issue, we cannot conclude it was error for the Judge to decline to consider evidence that Applicant submitted on remand regarding other issues, such as the Federal tax debt. Adverse decision is affirmed.

CASE NO: 17-03024.a2

DATE: 01/09/2020

DATE: January 9, 2020

In Re:)	
)	
-----)	ISCR Case No. 17-03024
)	
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 12, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 26, 2019, after considering the record, Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On September 6, 2019, the Appeal Board remanded the decision to the Judge for corrective action. On October 10, 2019, the Judge issued a Decision on Remand in which he again denied Applicant’s request for a security clearance, and Applicant appealed that decision.

In the Decision on Remand, the Judge found in favor of Applicant on two of six Guideline F allegations and on all of the Guideline G allegations. Those favorable findings have not been raised as an issue in this appeal. The Judge found against Applicant on SOR allegations asserting that he received a Chapter 7 bankruptcy discharge in 2017; that he failed to file local state taxes for 2014-2016 as required; that he owed about \$740 in local state taxes for 2013; and that he owed about \$1,700 in Federal income taxes for 2013-2016.

In his appeal brief, Applicant questions whether the Judge had access to his Enhanced Subject Interview (ESI). He argues that document shows that his financial problems were due to conditions largely beyond his control and the Judge made no mention of it in his findings. The ESI is included in Item 6 of Department Counsel’s File of Relevant Material (FORM). In his analysis, the Judge did discuss that Applicant experienced several conditions beyond his control, such as a marital breakup, unemployment, back injury, uninsured medical expenses, and a Government furlough, but concluded he did not act responsibly under the circumstances. Applicant’s arguments pertaining to the ESI are not sufficient to rebut the presumption that the Judge considered all the evidence in the record. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016).

Applicant contends the Judge stated in the decision that he did not provide evidence to support his claim that his Federal income taxes were paid. He challenges that purported statement by pointing to a bank statement he provided on remand showing he received an IRS refund in May 2019 and arguing that he would not have received that refund if he still owed past-due Federal taxes. In our prior decision, we remanded the case to the Judge “to reopen the record to provide the parties an opportunity to present evidence and address the apparent conflict in the tax transcripts about the tax return filing dates”

In the Decision on Remand, the Judge stated:

The Appeal Board decision noted that Applicant claimed in his appeal brief that he paid the federal tax debt before I issued my original decision, but that he submitted no evidence to support his claim. He repeated his claim in his submission on remand. My original decision was based on the evidence in the record as of the date the record closed. If Applicant subsequently paid his delinquent taxes, he may

request reconsideration [sic] in accordance with Directive ¶ E3.1.37 through E3.1.39.
[Decision on Remand at 7.]

Since we only instructed the Judge to reopen the record on remand for the purpose of providing the parties the opportunity to submit evidence on the tax filing issue, we cannot conclude it was error for the Judge to decline to consider evidence that Applicant submitted on remand regarding other issues, such as the Federal tax debt.

The Judge concluded that Applicant did not receive financial counseling. In his appeal brief, Applicant challenges that conclusion by stating that he thought he submitted such proof but could not positively say he did so and would like to submit such proof. The Appeal Board, however, cannot receive new evidence on appeal. Directive ¶ E3.1.29. We note that Applicant's bankruptcy petition filed in early 2017 reflects that he received a briefing from an approved credit counseling agency within 180 days before the filing of that petition and he obtained a certificate of completion. FORM Item 8 at 9 and Item 6 at 17. Even though the Judge may have erred by failing to give Applicant credit for receiving financial counseling, such an error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No.17-01181 at 3-4 (App. Bd. Apr. 30, 2018). Applicant also contends that a security clearance is very important to him. However, the adverse impact of an unfavorable decision is not relevant in evaluating clearance eligibility. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

Applicant failed to establish 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, 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