

KEYWORD: Guideline F

DIGEST: It is well established that a Judge may consider unfavorable non-alleged matters for certain limited purposes, such as (a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. Adverse decision is affirmed.

CASE NO: 19-01220.a1

DATE: 06/01/2020

DATE: June 1, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-01220
)	
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 May 6, 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 February 24, 2020, after the hearing, Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his findings and conclusions and 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

Applicant, who is in his 40s, is employed in a position supporting a Federal agency. He has earned a bachelor's degree, served on active duty in the military, and received an honorable discharge. He is married with a minor child. He has held a security clearance since the mid-90s.

The SOR alleges that Applicant had two delinquent credit card accounts totaling about \$29,000. He admitted both allegations with explanations. Unemployment contributed to his financial problems. He experienced periods of unemployment when temporary jobs ended. One of his jobs ended by mutual agreement after he received notice of unsatisfactory performance. In another job, he was asked to do work that he did not know how to do and that employment ended with his unanticipated release.

Applicant had intended for the statute of limitations to run on both debts so that they would become uncollectible but changed his mind when he received the SOR. In his SOR Response, he noted that he received financial advice from both his facility security officer (FSO) and a financial advisor, and he negotiated settlements for each debt. This was the first time that he documents contacting the creditors since he learned of the delinquent status of the debts in 2014. He began making regular payments on them in 2019, and both debts are scheduled to be paid in May 2020. He does not utilize a written budget but rather keep track of his finances mentally.

Applicant owes the Internal Revenue Service (IRS) for delinquent taxes that are not alleged in the SOR. Part of this indebtedness was the result of Applicant not reporting taxable income as a 1099 employee in 2013 and 2014. The other part is the result of Applicant making an erroneous notation on his 2018 W-2 Form indicating he was exempt from Federal taxes for the year. The combined total of his Federal tax debt is about \$19,000. He indicated that he has been making regular payments on the earlier tax indebtedness since 2014 but only provided documentation showing payments to the IRS since October 2018. In May 2019, his monthly IRS payments increased from \$300 to \$500 to account for the 2018 delinquency. His state tax delinquency for 2013 and 2014 has been resolved through periodic payments. The Judge indicated that he would address the IRS tax issues in his whole-person analysis.

The Judge's Analysis

Applicant has a history of not meeting his financial obligations. He took no documented action to resolve the two delinquent credit card debts until after he received the SOR. He experienced periods of unemployment that were beyond his control but did not document responsible action under the circumstances. During the period in question, he took three vacations outside the United States. "The only financial counseling Applicant received was in May 2019, when the FSO made recommendations about how to negotiate and settle debts. Applicant provided no information on the advice the financial adviser provided to repair his credit." Decision at 7. He merits only partial credit for making good-faith efforts to resolve the debts because he initially planned to let them become uncollectible through the running of the statute of limitations.

Discussion

In his appeal brief, Applicant makes arguments based on assertions that are not contained in the record. Such assertions constitute new evidence. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant challenges some of the Judge's findings of fact and conclusions. We examine challenged findings to see if they are supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018). From our review of the record, the Judge's material findings and conclusions of a security concern are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019).

Applicant argues, for example, the Judge's erred in concluding he failed to present credible evidence of financial counseling by pointing to statements in his SOR Response that reflect he received such counseling. We note the Judge made findings that Applicant consulted with a financial advisor. In his SOR Response, Applicant noted a financial advisor instructed him about downloading his credit report, reviewing it, and contacting the creditor of the two debts to negotiate repayment. Additionally, he mentioned talking to another financial advisor who focused on how to negotiate with the creditor but also made suggestions on how to repair his credit after the debts were resolved. The Judge apparently was not convinced this evidence was sufficient to merit full credit under Adjudicative Guideline (AG) ¶ 20(c) – "*the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.*" Directive, Encl 2, App. A ¶ 20(c). The Judge concluded, "Applicant receives negligible mitigation under AG ¶ 20(c)." Decision at 7. We cannot say this conclusion was erroneous. In general, Applicant has failed to identify any error that would likely have an impact on the outcome of the case. *See, e.g.*, ISCR Case No 11-15184 at 3 (App. Bd. Jul. 25, 2013) (an error is harmless if it did not likely affect the outcome of the case).

Applicant further states, “The Administrative Judge and Department Counsel attempted to bring forth issues with the Applicant’s history with Federal Taxes but the Applicant made immediate arrangements with the IRS after each tax year filing, and had no issues with those debts in a way that they should not be looked upon unfavorably towards the Applicants [sic] security standing.” Appeal Brief at 2. To the extent that Applicant is challenging the Judge’s consideration of his non-alleged tax issues, we do not find that contention persuasive. It is well established that a Judge may consider unfavorable non-alleged matters for certain limited purposes, such as (a) in assessing an applicant’s credibility; (b) in evaluating an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017). We find no error in the Judge’s consideration of Applicant’s tax issues in his whole-person assessment.

The balance of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. An applicant’s disagreement with the Judge’s weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020).

Applicant has failed to establish the Judge committed any harmful errors. 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