

KEYWORD: Guideline F

DIGEST: Applicant notes that DoD granted him a security clearance and later stated it was granted in error. In this regard, it merits noting that there is no right to a security clearance. Department of Navy v. Egan, 484 U.S. 518, 528 (1988). Nor does a prior favorable security clearance decision give rise to a vested right or interest in continued retention of a security clearance. To the extent that Applicant may be claiming his security clearance could not be denied or revoked, such an argument is unpersuasive because the Federal Government can not be equitably estopped from denying or revoking access to classified information. Adverse decision affirmed.

CASE NO: 19-02485.a1

DATE: 07/21/2021

DATE: July 21, 2021

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In Re:	)	
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	)	
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 December 16, 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 July 2, 2020, the SOR was amended to include additional Guideline F allegations. On April 16, 2021, after the hearing, Administrative Judge Wilford H. Ross 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 in the appeal: whether DOHA has jurisdiction in this case 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 and Analysis**

Applicant, who is in his 60s, is married. One of his children has passed away in 2008, three others survive. He has a master’s degree and has taken courses for a doctorate degree. This is his first application for a security clearance.

As amended, the SOR alleged that Applicant failed to file his Federal and state income tax returns in a timely manner for 2010-2011 and 2013-2017, that he owed delinquent Federal and state taxes totaling about \$114,000, and that he had six other delinquent debts totaling about \$18,000. In his SOR responses, he admitted each allegation with the exception of those pertaining to his state tax filings and debts for 2013-2017 and an educational loan for about \$2,740. The Judge found in favor of Applicant on the alleged state tax filings and debts that he denied and on two of the other alleged debts (one for \$669 and the other for \$6,470). The Judge found against him on the remaining allegations.

Applicant’s wife supervises the household finances. In 2018, an accountant and IRS representative advised Applicant and his wife not to file their Federal income tax returns for 2010 and 2011 because of the passage of the statute of limitations. They received the same advice regarding their state income tax returns for those years. In 2019, Applicant and his wife filed their Federal income tax returns for 2013-2017. They owed taxes for each of those years and have not made any payments towards those taxes. As of 2019, they owed the IRS about \$119,000 and are working on an offer in compromise. No evidence was presented to show the IRS has received an offer in compromise from them. Applicant’s wife testified that part of the reason she procrastinated on filing the tax returns was because of the sudden death of their child in 2008.

The alleged debts are confirmed in credit reports. Applicant and his wife attribute those debts to him being laid off from a former job. He has made payments towards each of the debts and has made payment arrangements for five of the six debts.

Although Applicant has filed all of the alleged tax returns, he “was extremely dilatory” in doing so. Decision at 8. He has just begun to resolve his delinquent consumer debt. “I have

considered the facts of his work issues, his [child's] tragic death, and the dilatory conduct of his wife, who was managing the family finances. All that considered, there remains the fact that there is little track record of Applicant resolving his debts, with limited exceptions.” *Id.* He has failed to mitigate the security concerns arising from his tax filings and consumer debt delinquencies.

## **Discussion**

In his appeal brief, Applicant states that, when he “was told to be at the hearing[,]” his employer terminated his employment and stated he must maintain a security clearance. Appeal Brief at 1. This contention raises the issue whether DOHA had jurisdiction to hold a security clearance hearing. *See* Directive ¶ 4.4, stating that, subject to certain exceptions, actions under the Directive shall cease upon termination of an applicant’s need for access to classified information. As Department Counsel notes in his reply brief, the Judge addressed this issue at the hearing by asking whether Applicant was sponsored for a security clearance. In response to that question, Department Counsel stated that he checked the Joint Personnel Adjudication System (JPAS) the previous evening and, even though Applicant was no longer employed, his former employer was still sponsoring him for a security clearance and he could be rehired. Based on that representation, the Judge concluded that DOHA still retained jurisdiction in this case. Tr. 6-9. We find no error in that conclusion. Additionally, to the extent that Applicant may be claiming his former employer erred in terminating his employment or in the processing of his security clearance, the Appeal Board has no authority over actions taken by an employer.

Applicant also notes that DoD granted him a security clearance and later stated it was granted in error. In this regard, it merits noting that there is no right to a security clearance. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988). Nor does a prior favorable security clearance decision give rise to a vested right or interest in continued retention of a security clearance. *See, e.g.*, ISCR Case No. 01-19823 at 5 (App. Bd. Dec. 3, 2003). To the extent that Applicant may be claiming his security clearance could not be denied or revoked, such an argument is unpersuasive because the Federal Government can not be equitably estopped from denying or revoking access to classified information. *Id.*

Applicant has not challenged any of the Judge’s specific findings of fact. Rather, his remaining arguments amount to a disagreement with the Judge’s weighing of the evidence. He points out, for example, that his world stopped when his child passed away, highlights his efforts to resolve his financial problems, and asserts those problems did not affect his work in any manner. These arguments are not sufficient to demonstrate 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). He also notes that ineligibility for a security clearance limits his job opportunities. The impact of an adverse decision on an applicant, however, is not a relevant consideration in determining his or her national security eligibility. *See, e.g.*, ISCR Case No. 19-01759 at 3 (App. Bd. Jun. 8, 2020).

Applicant failed to establish that the Judge committed any harmful error. The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory

explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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* at 528. *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