

KEYWORD: Guideline F

DIGEST: Applicant argues, for example, that the Judge did not give appropriate weight to his marital separation and divorce, medical issues, unemployment, and efforts to resolve the tax liability. None of his arguments, however, are sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse Decision Affirmed.

CASE NO: 20-00686.a1

DATE: 08/27/2021

DATE: August 27, 2021

In Re:)	
)	
-----)	ISCR Case No. 20-00686
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 10, 2020, 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 June 4, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 issue on appeal: 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 has worked in the defense industry for about 30 years and has held a security clearance for most of that time. The SOR alleged that Applicant owed about \$98,900 in delinquent Federal taxes for 2007-2018. He admitted he owed about \$74,600 in delinquent taxes for 2009-2014. His tax debts arose from him taking early distributions from his 401(k) plan due to a divorce, medical issues, and paying educational expenses for his children. He also experienced a period of unemployment in 2015-2016 and incurred penalties for failing to file his tax returns in a timely manner. Although he estimated his Federal tax liability was over \$100,000 in 2020, IRS documents reflect that liability was about \$54,000 in early 2021. He has consulted with tax professionals and sporadically attempted to resolve his tax liability over the years, but it has been primarily reduced through credits applied from his more current tax years. His financial situation is otherwise stable. He did not act responsibly in attempting to resolve his substantial tax debts. His unwillingness to abide by the tax rules and regulations casts doubt on his reliability and trustworthiness.

Discussion

In his appeal brief, Applicant does not challenge any of the Judge’s specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. He argues, for example, that the Judge did not give appropriate weight to his marital separation and divorce, medical issues, unemployment, and efforts to resolve the tax liability. None of his arguments, however, are sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough 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. 19-01495 at 3 (App. Bd. Sep. 30, 2020).

Additionally, Applicant relies on hearing-level decisions in other cases to argue the Judge erred in his analysis of this case. Generally, how particular fact scenarios were adjudicated in other cases are not a relevant consideration in the Appeal Board’s review of a case. *See, e.g.*, ISCR Case

No. 19-03344 at 3-4 (App. Bd. Dec. 21, 2020). None of the hearing-level decisions that Applicant cites are sufficient to show the Judge erred in his analysis of this case.

Applicant has failed to establish any harmful error below. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable.

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