

KEYWORD: Guideline F

DIGEST: On appeal, Applicant takes issue with the Judge’s finding that he provided no documentation of his efforts to resolve his tax delinquencies. In this regard, we first note that Applicant’s SOR response provided the name and telephone number of the tax relief company as well as his case number with that company. To the extent that he may have believed the Judge would contact the tax relief company to verify his claim that the delinquent tax returns were filed, he was mistaken. A Judge is an impartial fact-finder and has no authority to serve as an investigator, such as contacting potential witnesses independently to interview them, which would be inconsistent with his or her duty of impartiality. We also note that Applicant’s SOR Response contains IRS documents, including notices that his claims for refunds for tax years 2014 and 2015 were disallowed in 2020. These documents are some evidence that his Federal income tax returns for those years were filed. Consequently, the Judge’s finding that Applicant presented “no documentation” of his efforts to resolve his tax filing delinquencies is inaccurate. Decision at 2. This error, however, was harmless because it did not likely affect the outcome of the case. Adverse Decision Affirmed.

CASE NO: 20-03119.a1

DATE: 09/22/2021

DATE: September 22, 2021

In Re:)	
)	
-----)	ISCR Case No. 20-03119
)	
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 7, 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 decision on the written record. On July 21, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 of fact 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 is in his fifties and is married with children. He has a bachelor’s degree and has been working for a government contractor since 2019. He failed to file his Federal income tax returns for 2012-2018 as required. He attributed this failure to going through unspecified financial difficulties. He estimated that he owes between \$25,000 and \$70,000 in delinquent taxes and indicated he was working with a tax resolution company to resolve his tax delinquencies, but provided no documentation. None of the mitigating conditions apply.

Discussion

Applicant’s appeal brief contains documents that were not presented to the Judge for consideration. The Appeal Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

On appeal, Applicant takes issue with the Judge’s finding that he provided no documentation of his efforts to resolve his tax delinquencies. In this regard, we first note that Applicant’s SOR response provided the name and telephone number of the tax relief company as well as his case number with that company. To the extent that he may have believed the Judge would contact the tax relief company to verify his claim that the delinquent tax returns were filed, he was mistaken. A Judge is an impartial fact-finder and has no authority to serve as an investigator, such as contacting potential witnesses independently to interview them, which would be inconsistent with his or her duty of impartiality. *See, e.g.*, ISCR Case No. 16-03709 at 2 (App. Bd. Jul. 2, 2018). We also note that Applicant’s SOR Response contains IRS documents, including notices that his claims for refunds for tax years 2014 and 2015 were disallowed in 2020. These documents are some evidence that his Federal income tax returns for those years were filed. Consequently, the Judge’s finding that Applicant presented “no documentation” of his efforts to resolve his tax filing delinquencies is

inaccurate. Decision at 2. This error, however, was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020). As the Appeal Board has previously noted, it is reasonable for a Judge to expect an applicant to present documentation corroborating his or her actions taken to resolve alleged financial problems. *See, e.g.*, ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 15, 2020). In this case, the Judge’s overall conclusion that Applicant failed to present sufficient evidence to mitigate the security concerns arising from his tax filing deficiencies is sustainable.

Applicant also argues that he has taken steps to rectify his tax problems in a timely manner by working with the tax resolution company. This argument is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Applicant has failed to establish the Judge committed harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record.

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