

KEYWORD: Guideline F

DIGEST: Applicant admitted six of the seven allegations. He admitted with clarifications that he owed the Internal Revenue Service (IRS) taxes totaling about \$102,000 for 2014-2017 and he failed to file as required his state income tax returns for 2015-2018. Adverse Decision Affirmed.

CASE NO: 20-01753.a1

DATE: 09/22/2021

DATE: September 22, 2021

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**

Lindsay Bierman, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 15, 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 16, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is in his sixties, is married, and has adult children. He honorably served in the military and retired with a service-connected disability. He has earned a bachelor’s degree and has previously held a security clearance.

In responding to the SOR, Applicant admitted six of the seven allegations. He admitted with clarifications that he owed the Internal Revenue Service (IRS) taxes totaling about \$102,000 for 2014-2017 and he failed to file as required his state income tax returns for 2015-2018. The Judge found against him on the allegations he admitted and in favor of him on the allegation he denied.

In his 2018 security clearance application, Applicant disclosed that he was working with a tax specialist to prepare the delinquent Federal and state income tax returns for 2014-2017. He attributed the tax filing delinquencies to various reasons, including loss of income from rental properties, repair and management expenses for the rental properties, sale of a rental property at a loss, unemployment, a significant reduction in income at a new job, family members passing away, living apart from his wife, and his wife’s medical problems. In his January 2019 background interview, Applicant stated his goal was to have all of his delinquent tax returns filed by September 2019.

Applicant’s IRS Transcripts reflect that he filed his 2013 tax return in October 2015, the IRS filed substitute tax returns for him for tax years 2014-2017 in 2019 and 2020, and he filed his 2018 tax return in December 2020. In July and October 2020, Applicant filed his Federal and state income tax returns for 2014-2017. Applicant’s 2019 and 2020 Federal and state tax returns were filed in March 2021 and May 2021, respectively.

In September 2019, Applicant proposed to pay the IRS within five months about \$76,600, the tax liability for 2014-2016. The IRS accepted the proposal but Applicant presented no documentary evidence of any payments. In January 2021, Applicant proposed to pay the IRS within four months about \$126,900, the tax liability for 2014-2017. The IRS accepted this later proposal but Applicant presented no documentary evidence of any payments. Applicant has promised to file his future tax returns in a timely manner and to expeditiously pay any delinquent taxes.

### **The Judge’s Analysis**

The Judge acknowledged that Applicant may owe less taxes than those reflected on the substitute tax returns that the IRS filed for him because he may be entitled to exemptions, credits, and deductions that may not have been previously considered. Nevertheless, he still owes taxes for several years.

Although Applicant experienced conditions beyond his control that contributed to his financial problems, he failed to establish he acted responsibly under that circumstances. Of note, he failed to make a good-faith effort to file his tax returns in a timely manner or to pay his delinquent income taxes. His recent actions to resolve his financial problems were not sufficient.

Mitigating Condition 20(g) applies because Applicant filed all of his late income tax returns and made payment arrangements with the IRS for the delinquent taxes, but those efforts do not mitigate the security concerns. In this regard, his delay in filing the tax returns and his failure to document any payments under the payment arrangements are important factors to consider.

## **Discussion**

In his appeal brief, Applicant stated:

Significantly, the Judge erred in some of his findings of fact. He wrote that [Applicant] owed \$23,387 to the Internal Revenue Service (“IRS”) in the Tax Year (TY) 2014. The amount due for TY 2014 is actually \$22,387—an amount that is \$10,000 less that [sic] what was specified in the opinion. [Appeal Brief at 2.]

In the decision, the Judge noted that the SOR alleged Applicant owed “\$23,387 for TY 2014[.]” Applicant is correct that amount is inaccurate. The SOR alleged that Applicant owed \$22,387 to the IRS for that year, which is an apparent typographical error of \$1,000. We also note the Judge correctly found later in the decision that Applicant’s IRS Tax Transcript, dated May 31, 2021, reflected he owed \$23,213 to the IRS for TY 2014, citing Applicant’s Exhibit (AE) W-2 as supporting evidence. Decision at 3. The Judge’s error regarding the amount alleged in the SOR was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020).

In his brief, Applicant also contends “[t]he Directive places no time limit for a security clearance applicant to mitigate possible concerns that the government might have.” Appeal Brief at 8. This statement, although correct, does not take into account that an applicant’s handling of alleged financial problems is examined to determine whether he or she acted in a manner that demonstrates a lack of reliability, trustworthiness, or good judgment. As quoted by the Judge in his decision, the Appeal Board has previously stated,

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations

over time or when there is no immediate threat to his own interests. [Decision at 11, citing ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017).]

We find no error in the Judge’s conclusion that Applicant’s recent efforts to resolve his financial problems “are too little, too late to fully mitigate security concerns.” Decision at 13.

Applicant’s brief argues that the Judge did not consider all the relevant evidence and did not properly weigh the evidence. In making such arguments, he highlights, for example, the conditions beyond his control that have impacted his financial problems. None of his arguments are enough to rebut the presumption that the Judge considered all of the evidence in the record or sufficient 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. 19-01649 at 3 (App. Bd. Jan. 6, 2021).

In his brief, Applicant requests “a probationary period be instituted.” Appeal Brief at 9. To the extent that he is requesting a conditional security clearance, we conclude that Applicant has not established that the granting of an exception under Appendix C of the Adjudicative Guidelines is merited.

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 Y. Ra'anan  
Michael Y. 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