

KEYWORD: Guideline F

DIGEST: Applicant's concern regarding the malfunction of video-teleconference equipment is overcome by the Judge's express statement that he did not consider those pages of the transcript. Adverse decision affirmed.

CASENO: 11-12537.a1

DATE: 02/11/2016

DATE: February 11, 2016

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In Re:)	
)	
-----)	ISCR Case No. 11-12537
)	
)	
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 October 17, 2014, 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 November 21, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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

The Judge made the following findings pertinent to the issues raised on appeal. Applicant has been continuously employed since 2004 and has held a clearance since 2008. He owes the IRS about \$40,000 for unpaid taxes from tax years 2005 through 2012 and for 2014.¹ Applicant attributed his tax problems to his having spent funds on a wedding rather than his taxes, as well as to inadequate withholding. Over the past several years Applicant has entered into a number of installment agreements with the IRS. When he is unable to pay, he contacts the IRS and negotiates a new agreement. Applicant has resolved other debts alleged in the SOR. He has about \$700 in discretionary income each month. His budget does not show any payments to the IRS.

The Judge’s Analysis

The Judge cleared Applicant of all SOR debts except those pertaining to his delinquent taxes. He noted that Applicant has been fully employed for many years but has consistently failed to pay his taxes in full. The Judge noted that Applicant did not pay his 2014 taxes, which would have become due after the receipt of the SOR. The Judge concluded that not even the possible loss of a security clearance could motivate Applicant to change his financial habits.

Discussion

Applicant cites to evidence that he has resolved other SOR debts. He also points to his latest repayment plan that, he argues, will enable him to resolve his tax delinquencies. Applicant’s argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it 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. 14-06093 at 3 (App. Bd. Dec. 4, 2015).

¹The SOR alleged tax debts up through tax year 2011. The Judge stated that he was considering the non-alleged debts only in evaluating Applicant’s case for mitigation and the whole-person factors. Decision at 3, note 7.

Applicant requests an opportunity to present us with additional information about his budget, payments to the IRS, and resolution of other debts. His brief also refers to matters from outside the record. We are not able to consider new evidence on appeal. Directive ¶ E3.1.29. Applicant notes that the attorney who represented him at the hearing had requested the Judge not to consider several pages of the transcript due to a malfunction with the video-teleconference equipment. The Judge stated that he did not consider these pages. Decision at 2, note 6. Therefore, any technical problem that may have occurred did not impair Applicant's receipt of due process.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

