

KEYWORD: Guideline F

DIGEST: Applicant's argument relies on new evidence which the Board cannot consider.
Adverse decision affirmed.

CASENO: 14-02936.a1

DATE: 04/15/2016

DATE: April 15, 2016

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In Re:)	
)	
-----)	ISCR Case No. 14-02936
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Anthony J. Kuhn, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On

February 10, 2015, 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 February 4, 2016, 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 findings of fact were supported by substantial record evidence. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has had tax problems, from 2008 to 2013, due to his not having sufficient withholding from his income. Applicant testified that he had no problems in 2009, although the Judge found that statement to be incorrect. *See* Decision at 3, note 2. As of the end of 2014, Applicant’s tax debt totaled over \$24,000. Applicant submitted three documents that purported to show that he had a payment plan with the IRS. However, the documents were not complete and left out material information.

The SOR alleged debts to the IRS for tax years 2011 and 2012. The Judge stated that he was considering debts from the other years for their bearing upon mitigation and upon a whole-person analysis. *Id.* at 2, note 1. The Judge found that Applicant had submitted no information concerning how much he owed or concerning his ability to pay. The Judge stated that Applicant had been given three opportunities to provide such evidence, the most recent having been from January 4, 2016 until January 22, 2016.¹

The Judge’s Analysis

The Judge stated that Applicant has had tax problems since 2008, his delinquencies for 2011 and 2012 totaling over \$12,000. He stated that none of the documents that Applicant submitted address these tax years at all, and Applicant submitted no evidence showing that he had been making regular payments to the IRS. The Judge concluded that Applicant had not met his burden of producing evidence in mitigation.

Discussion

Applicant contends that the Judge’s findings were not based upon “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See* Directive ¶ E3.1.32.1. In making his argument, Applicant cites

¹The hearing took place on June 18, 2015, and the record closed on January 22, 2016. Applicant’s argument on appeal that he was unable quickly to obtain the evidence in question is unpersuasive, given the eleven months that elapsed between the issuance of the SOR and the ultimate close of the record.

to documents that are not included in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. We have examined the Judge’s findings in light of the entirety of the record evidence and conclude that they are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). Applicant has not cited to any harmful error in the Judge’s decision.

Although styled as a challenge to the Judge’s findings, much of Applicant’s argument consists of a disagreement with the Judge’s weighing of the evidence. An ability to argue for an alternative interpretation of the record is not 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. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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