

Applicant raised the following issues on appeal: whether the Judge's findings contained errors and whether the Judge's decision was arbitrary, capricious, or contrary to law. The Judge's finding in favor of Applicant on the sole Guideline E allegation was not raised as an issue on appeal. Consistent with the following, we affirm the Judge's adverse decision.

The Judge's Findings of Fact

Applicant, who is 61 years old, admitted each of the Guideline F allegations. A Federal tax lien was filed against him in 2009 for about \$121,000 and another in 2010 for about \$32,000. He also has ten other delinquent debts totaling about \$37,000.

Applicant worked for a Federal contractor from 1996 until he developed a serious and debilitating illness in 2014. Since then, he has been unable to work or pay his bills. He contacted the creditors to explain the reason why he could not pay them. He does not know when he will be able to pay his delinquent debts. The alleged debts are established by credit reports from September 2012 and July 2015.

While he was employed, Applicant worked away from his residence, and his stepmother took care of his bills, banking, and taxes. She was supposed to file his Federal income tax returns and make the required quarterly tax payments. He testified that she never filed his 2004 through 2011 Federal income tax returns and did not pay his taxes as she agreed to do. He paid an attorney about \$6,000 to arrange an installment agreement with the Internal Revenue Service (IRS) to pay his tax debt. He stated that he has been making monthly payments of \$124 to the IRS since 2012. He provided a letter indicating the IRS accepted an installment agreement for him to pay \$124 a month beginning in December 2013. He provided proof he made payments of \$124 to the IRS in December 2013 and January 2016. An IRS letter from November 2015 indicates that Applicant owes a balance of about \$82,000 for 2004 through 2012. In the block "last payment received," the amount is zero. He testified that he uses his Social Security disability payment to pay the IRS. He indicated that the IRS may suspend his installment agreement because he cannot afford to make the payments.

Applicant provided a character letter from an employer who describes him as dependable, conscientious, honest, trustworthy, and an excellent employee.

The Judge's Analysis

The Judge concluded that none of Applicant's alleged debts are paid or resolved. She noted that Applicant's stepmother stole from him and abused a position of trust by failing to manage his financial obligations. In 2014, he became disabled and was unable to pay his bills. He provided proof of making only two payments to the IRS under an installment agreement, but the Judge noted the balance he owes to the IRS is less than the amount of the alleged tax liens. Although his medical condition was beyond his control, he failed to provide sufficient evidence that he responsibly monitored his financial situation to ensure his taxes and other debts were being paid. There is insufficient evidence to conclude his financial problems are being resolved or are under control.

Discussion

Applicant contends that the Judge erred in making a finding of fact about his employment. The Judge found that he began working for his employer in 1996, but the evidence reflected that he actually started there in 2002. Although the Judge erred in that finding, it is likely that she would have rendered the same decision even if that error had not been made. Therefore, the Judge's error is harmless. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015).

Applicant argues that the 2012 credit report shows that he made high-cost purchases, was not turned down for credit, and was living within his means. He also points out that his 2015 credit report reflects a different story because of delinquent debts resulting from his catastrophic illness. This argument amounts to a disagreement with the Judge's weighing of the evidence and 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. 14-06634 at 2 (App. Bd. Apr. 28, 2016).

In the appeal brief, Applicant also provided documents concerning his Federal tax debt that he did not have at the time of the hearing. Those documents constitute new evidence that the Appeal Board cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board").

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has not identified any harmful error likely to change the outcome of the case. 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board