

KEYWORD: Guideline F

DIGEST: Applicant challenges the Judge's findings of fact. Applicant is correct that some of them appear to be erroneous, such as her finding that he will begin to draw retirement pay in three years. He also testified that he was raising and selling animals on his farm rather than purchasing them, as the Judge found. However, even viewed cumulatively, the errors did not likely exert an effect on the overall decision. Adverse decision affirmed.

CASENO: 15-01173.a1

DATE: 10/28/2016

DATE: October 28, 2016

In Re:	)	
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Applicant for Security Clearance	)	ISCR Case No. 15-01173

**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 27, 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 August 8, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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’s findings of fact contained errors 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**

Applicant graduated from a military academy. He served on active duty from 2001 until 2008 and later in the Reserves. He has held a clearance since the 1980s. Applicant is married with three children. He owes over \$150,000 to the Federal Government for past-due taxes for 2009 through 2012, and he owes nearly \$450 in state taxes. In 2010 Applicant was discharged in Chapter 7 bankruptcy. Applicant’s financial problems were affected by his having worked for a company that went out of business owing him about \$88,000 in salary. He started up his own company and used his savings and credit cards to pay for living expenses. In the mid-2000s, Applicant bought four pieces of real estate. When the economy faltered, he could not sell them. He tried to make mortgage payments using credit cards and savings and attempted to work out a loan modification. He was not successful in this attempt. Applicant’s bankruptcy discharged all of his debts except for one property that he kept for a retirement home. He acknowledges that, with the advantage of hindsight, his real estate investment plan was not a good idea. Applicant is attempting to sell a piece of property in order to resolve his IRS debt. He began listing it in January 2016 and is seeking nearly \$500,000. Applicant testified that he has called the IRS but has never been able to speak with a representative. He has increased his withholding. He expects to begin drawing his military retirement pay in three years, and the money will be intercepted to pay his tax debt. The state tax obligation has now been paid through garnishment. Applicant earns about \$150,000 to \$180,000. He has discretionary income each month, but he is starting a small farm in another state. He uses about \$2,000 a month to buy animals.

### **The Judge’s Analysis**

The Judge entered favorable findings regarding the state tax debt. However, she concluded that Applicant had not mitigated concerns arising from his Federal tax delinquencies or from his bankruptcy. Though noting circumstances that were outside Applicant’s control, such as his failure to receive full pay from an employer, she concluded that he had not shown responsible action in regard to his debts. For example, she drew attention to Applicant’s having purchased several pieces of real estate at the same time that his financial condition was precarious and to his expenditure of funds on buying and selling farm animals rather than resolve his debts. She stated that he does not

have a definite plan for resolving his debt to the IRS, beyond trying to sell his property or using retirement funds some time in the future.

### **Discussion**

Applicant challenges the Judge's findings of fact. Though acknowledging that many of the alleged errors are minor in and of themselves, he contends that their cumulative effect is harmful and warrants reversal. We have examined the Judge's findings. Applicant is correct that some of them appear to be erroneous, such as her finding that he will begin to draw retirement pay in three years. He also testified that he was raising and selling animals on his farm rather than purchasing them, as the Judge found. However, even viewed cumulatively, the errors did not likely exert an effect on the overall decision. Moreover, one of the challenged findings, concerning the garnishment action, pertained to the state tax debt that the Judge resolved in Applicant's favor. The Judge based her adverse decision for the most part on evidence that Applicant owes over \$150,000 in Federal taxes and has done little actually to satisfy this obligation. His stated plan consists of little more than promises for future action, which is not enough to establish a track record of debt resolution. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). Her findings regarding the IRS debt were consistent with the record that was before her. On the whole, the Judge's material findings of security concern are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge's findings. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). "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'an

Michael Ra'an  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board