

KEYWORD: Guideline F

DIGEST: Applicant argues that the Judge did not consider all of the evidence in the record, citing to his having held a clearance for years, his reputation, and the reasons for his financial problems. The Judge made extensive findings, which included matters favorable to Applicant, and he discussed this evidence in his analysis. The Judge's findings and analysis were consistent with the record that was before him. Applicant has not rebutted the presumption that the Judge considered the entirety of the evidence, nor has he shown that the Judge failed properly to weigh the evidence. Adverse decision affirmed.

CASENO: 15-02477.a1

DATE: 11/23/2016

DATE: November 23, 2016

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**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 2, 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 23, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 failed to consider record evidence 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 seeks to retain a clearance that he has held for many years. He retired from the military after 20 years of service and has since been employed in the Defense industry. He has worked for his current employer since 2009. He enjoys an outstanding reputation for the quality of his work, as well as for his honesty, dependability, and responsibility.

Applicant has a history of financial problems, which he disclosed in an earlier security clearance application (SCA). He stated that his credit card debts “snowballed,” exacerbating his financial difficulties. Decision at 3. In addition, he failed to pay around \$2,000 in Federal taxes in 2009 and 2010. His SOR lists failure to file Federal tax returns for those two years; a charged-off credit card in the amount of nearly \$8,000; and two unpaid medical bills of \$119 and \$25 respectively.

Applicant was not certain what caused his tax problems, though he believes that they stemmed from a change of employers in 2009. His former employer had given him a check for \$18,000, representing the funds from his retirement account. Applicant misplaced the check and failed to rollover the proceeds into another account. He subsequently found the check and deposited it into a regular bank account. His tax transcripts show that no tax return was filed in 2009 and that, in 2013, the IRS prepared a substitute return for him for 2010. His transcripts also show that he filed after the due date in 2013 and that he was charged a penalty for late payment of tax in 2014.

Applicant provided no documentation about the \$8,000 charged-off credit card account. He was asked about this debt during his 2012 clearance investigation. He has made no recent efforts to resolve this debt and it remains unresolved.

### **The Judge’s Analysis**

The Judge concluded that Applicant's case raised three disqualifying conditions: 19(a), (c), and (g).<sup>1</sup> He further concluded that Applicant's tax problems were due to negligence rather than to some cause outside Applicant's control. He also concluded that Applicant's credit card debt is ongoing, despite his having had several years in which to address it. The Judge noted Applicant's military service, his lengthy history of holding a clearance without incident or concern; his good employment record; and his voluntary reporting of his financial problems in his SCA. He found that this favorable evidence was not enough to mitigate the concerns arising from Applicant's delinquent debts and dilatory tax filings.

## Discussion

Applicant argues that the Judge did not consider all of the evidence in the record, citing to his having held a clearance for many years, his excellent reputation, and the reasons for his financial problems. The Judge made fairly extensive findings, which included matters favorable to Applicant, and he discussed this favorable evidence in his analysis. The Judge's findings and analysis were consistent with the record that was before him. Applicant has not rebutted the presumption that the Judge considered the entirety of the evidence, nor has he shown that the Judge failed properly to weigh the evidence. *See, e.g.*, ISCR Case No. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016).

Applicant contends that he does not have a history of financial problems. We construe this as an argument that his delinquent debts do not raise security concerns. The Directive presumes a nexus between admitted or proved conduct under any Guideline and an applicant's eligibility of a clearance. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). In the case before us, debts that have gone unresolved in the years since Applicant's previous clearance investigation can reasonably be characterized as a history of failing to pay debts. We find no error in the Judge's application of the disqualifying conditions.

Applicant cites to a Hearing Office case that he believes supports his effort to retain his clearance. We give this case due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearings Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns, 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). Failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and regulations. Voluntary compliance with such rules and regulations is essential for protecting classified information. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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<sup>1</sup>Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts;" 19(c): "a history of not meeting financial obligations;" and 19(g): "failure to file annual Federal . . . tax returns as required[.]"

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