

KEYWORD: Guideline F

DIGEST: Applicant challenges the Judge’s findings that he had admitted the allegation regarding his tax delinquencies and had knowingly misused his corporate credit card. In his SOR Response, Applicant admitted all of the SOR allegations without qualification. Regarding the credit card, the allegation stated he had “knowingly and intentionally” misused the card for personal expenses. His testimony at the hearing was generally consistent with his SOR admissions. Adverse decision affirmed

CASENO: 15-03095.a1

DATE: 10/26/2016

DATE: October 26, 2016

In Re:)	
-----)	ISCR Case No. 15-03095
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Skyler D. Samp, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 25, 2016, 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 19, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 works for a Defense contractor. He served in the Reserves from 2003 until 2012, during which time he deployed to a combat zone. His SOR alleges that he failed to file and pay Federal and state income taxes for 2013 and 2014. It also alleges that Applicant received a written warning for misuse of a corporate credit card and for other delinquent debts, including a collection account for telecommunications services. Applicant admitted the SOR debts.

By the time of the hearing, Applicant had still not filed his tax returns. After the hearing, he hired an attorney, who advised that he had filed all of them. Applicant owes over \$11,000 in unpaid taxes to the IRS for 2012 through 2015. He has an installment agreement whereby he will pay the IRS \$500 a month. Applicant misused his corporate credit card by charging personal expenses to it from 2012 to 2014. The total amount of the improper use was \$7,500. Applicant testified that he was sure that, when he was issued the card, he had signed a statement of understanding about its proper use.

Applicant attributed his delinquent debts to his own self-destructiveness. Decision at 4. A psychotherapist advised by letter that Applicant suffered from post traumatic stress disorder (PTSD), the symptoms of which are that, when threatened or overwhelmed, he shuts down and avoids the adverse circumstance. The psychotherapist attributed this problem to Applicant’s experiences in combat. Applicant claimed to have resolved his debts and promised to continue with his psychological treatment.

The Judge’s Analysis

The Judge stated that Applicant’s financial problems are ongoing. She stated that only two of his consumer debts were resolved and that he had not provided documentary evidence of payments toward his tax delinquencies. She concluded that the timing of his tax filings does not remove questions about his judgment. Though Applicant’s PTSD is a circumstance beyond his control, she stated that he had failed to demonstrate responsible action. She stated that there is no clear indication that his financial problems are under control.

Discussion

Applicant challenges the Judge's finding that he had admitted the allegation regarding his tax delinquencies. He also challenges the finding that he had knowingly misused his corporate credit card. However, in his SOR Response, Applicant admitted all of the SOR allegations without qualification. Regarding the credit card, the allegation stated he had "knowingly and intentionally" misused the card for personal expenses. SOR Response, dated February 5, 2016, at 1. His testimony at the hearing was generally consistent with his SOR admissions. The Judge's material findings are supported by "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." Directive ¶ E3.1.32.1.

The balance of Applicant's brief is a challenge to the Judge's weighing of the evidence. However, a party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 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'an

Michael Ra'an
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board