

KEYWORD: Guideline F

DIGEST: The Judge found against Applicant on one SOR allegation: a \$62,000 child support delinquent debt for which Applicant offered multiple explanations. The Judge also found that Applicant is not current on his state and federal income taxes. Adverse decision affirmed.

CASENO: 08-04252.a1

DATE: 06/22/2009

DATE: June 22, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 08-04252
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 30, 2008, DOHA 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 April 16, 2009, after the hearing, Administrative Judge Philip S. Howe 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 are supported by substantial record evidence; whether the Judge was biased against Applicant; and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 65 year-old systems engineer for a Defense contractor. He has had two prior wives. He has three children by the second of the two, and he went through “an acrimonious divorce” with her. Decision at 2.

Of the nine debts listed in the SOR, the Judge found against Applicant only as to one of them, a \$62,567 child/family support order by a court, arising from the above-referenced divorce from his second wife. Applicant provided several explanations for this debt: (1) that the court order misstated his income, resulting in erroneous payment calculations; (2) that the district attorney was prejudiced against him and that lawyers in the DA office falsified the court order; (3) that his second wife is the head of a crime family and put pressure on the DA to get more money from Applicant; and (4) that Applicant should not have to pay the debt because he is 65 years old. The Judge also found that Applicant is not current on his state and federal income taxes. Applicant stated that he has not paid his taxes because he does not want any refund to go to his ex-wife in satisfaction of the child support order. In the Analysis portion of the decision, the Judge concluded, *inter alia*, that Applicant had failed to demonstrate responsible behavior in regard to his child support debt. Neither did Applicant provide a reasonable basis to question the validity of this debt.

After reviewing the record, the Board concludes that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant claims that the Judge erred in finding that he had not filed tax returns in recent years. However, a review of the record supports the Judge’s findings.¹ Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). Concerning Applicant’s claim that the Judge lacked the requisite impartiality, there is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 07- 02253 at 3 (App. Bd. Mar. 28, 2008); ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). Applicant’s argument on appeal is not sufficient to rebut that presumption. After reviewing the record, the Board concludes that the Judge examined the relevant data and

¹See Tr. at 91: “Q: . . . Are you current on your state and federal taxes right now? . . . A: No. Q: You’re not? A: No . . . Q: How much do you owe [to State]: A: I don’t know, I haven’t filed them in years . . . Q: What about federal taxes? A: I’m behind in them too. I still haven’t filed in a couple [of] years.”

articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). Applicant points to his having held a security clearance for around 40 years without incident or concern. However, prior decisions to grant or retain a clearance do not undermine the legal sufficiency of the Judge’s subsequent adverse decision. “The government is not estopped from making an adverse clearance decision when there were prior favorable adjudications.” ISCR Case No. 07-17383 at 2 (App. Bd. Feb. 12, 2009), *quoting* ISCR Case No. 03-04927 at 5 (App. Bd. Mar. 4, 2005). Additionally, although the unpaid taxes were not alleged in the SOR, the Judge properly considered them in evaluating the mitigating conditions and the whole-person factors. The Judge’s decision that “it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 9. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, 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