

KEYWORD: Guideline F

DIGEST: Paucity of record evidence concerning Applicant’s debts, especially a tax lien in favor of the IRS, supported the Judge’s conclusion that Applicant had failed to mitigate the security concerns in his case. Adverse decision affirmed.

CASENO: 09-00798.a1

DATE: 10/06/2009

DATE: October 6, 2009

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**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 27, 2009, 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 that his case be decided on the written record. On July 29, 2009, after the close of the record, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary,

capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

Some of Applicant's assertions on appeal rely on matters not contained in the record below. As such, the assertions are based on new evidence. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The Judge found that Applicant owed the two delinquent debts listed in the SOR. She found that the first debt was to a telephone company in the amount of \$189, and was in collection status at the time of the close of the record. The Judge found that Applicant admitted that he owed the Internal Revenue Service \$664,401 in the form of a tax lien for past due liabilities for the tax years 1982 through 1994 and other federal taxes for the tax years 1995, 1996 and 2001. The Judge found that Applicant entered into an Offer in Compromise (OIC) with the IRS in August 2004. Applicant claimed that the tax lien debt was reduced in accordance with the OIC to \$63,179. The Judge found that a payment schedule was set up, but Applicant lost his job in February 2005 and ceased making payments on the tax lien in July 2005. The Judge noted that Applicant claimed that the IRS had applied refunds to the outstanding amount of the OIC, and he purportedly owed \$4,478 as of April 2008. Without making a more specific finding, the Judge found that the \$4,478 figure represented only the balance owed for tax year 1996 and did not represent the entirety of Applicant's unpaid balance owed to the IRS. She found that there was no explanation for why Applicant failed to pay his taxes on time for a period of 16 years. The Judge referenced documents submitted by Applicant, dated June 5, 2009, indicating that the \$664,401 tax lien was released. The Judge noted that Applicant did not provide an explanation as to what actions he took to obtain the release, how much he paid on the lien, when he paid it, or how he obtained the funds to pay it.

The Judge concluded that Applicant's two delinquent debts were of security significance, although she concluded that the telephone company debt was mitigated. She noted that Applicant provided no information that he attempted to take any action on the tax lien until 2004, and that he provided no explanation as to why he failed to pay his taxes for 16 years. The Judge further noted that Applicant failed to provide information as to the status of the OIC after he stopped making promised monthly payments, failed to provide information as to how he obtained the release of the lien, and failed to show how much he may have paid on the remaining debt. Overall, the tax debt was not mitigated because Applicant did not provide enough evidence to explain the circumstances of the large debt or the reasons he failed to pay his taxes.

Applicant argues that he never admitted that he owed the IRS \$664,401. He says that as of June 2009, he has no better understanding of why the IRS advised him that he no longer owed taxes than he does of the original lien figure of \$664,401. He also argues that he has never failed to live within his means and that he satisfied the IRS obligation to the best of his ability and apparently to the satisfaction of the IRS. These assertions do not establish error on the part of the Judge.

Applicant's denial that he admitted he owed the amount of the IRS tax lien is proffered for the first time on appeal. The Board has reviewed Applicant's answer to the SOR and his submissions to the record, and concludes that nothing in Applicant's statements in the record can be reasonably construed as a denial of the allegation that he owed the IRS \$664,401. The Board has also reviewed the totality of the record evidence and concludes that there is sufficient record

evidence to support the Judge's finding that Applicant owed the amount stated in the IRS tax lien.

The gravamen of the Judge's decision is that, given the establishment of the debt to the IRS, there is insufficient evidence to mitigate the government's concerns because of Applicant's failure to explain adequately the circumstances of the debt, the reasons behind Applicant's failure to address his tax delinquencies until 2004, and the circumstances surrounding the release of the tax lien. There is no presumption of error below. Given the paucity of evidence in this record that addresses the Judge's stated concerns, her ultimate adverse security decision and the analysis articulated in support of it are sustainable.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her 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)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision under Guideline F is sustainable.

### **Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board