

KEYWORD: Guideline F

DIGEST: The Board concludes the Judge's material findings of security concern are supported by substantial record evidence or constitute reasonable characterizations or inferences that could be drawn from the record. There is no basis to conclude that the Judge drew adverse inferences from Applicant's having repayment plans. Rather, she reasonably considered evidence he had not been faithful in making plan payments. Adverse decision affirmed.

CASENO: 12-02058.a1

DATE: 06/25/2014

DATE: June 25, 2014

In Re:)
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 -----) ISCR Case No. 12-02058
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 Applicant for Security Clearance)
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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 August 22, 2013, 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 decision on the written record. On March 25, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Joan Caton Anthony 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

A high school graduate, Applicant has worked for a Government contractor since 2008. He has previously been awarded a DoD security clearance and has held access to confidential information from another Government agency.

Applicant failed to timely file his Federal income tax returns for a number of years, and he owes a substantial amount of money for unpaid Federal taxes. He has estimated the amount of his IRS tax debt to be between \$47,000 and \$48,000. He entered into an installment plan for taxes owed in tax years 2000, 2002, and 2005. He made six payments and then stopped. This agreement was subsequently terminated.

He established another agreement to repay taxes owed for tax years 2000, 2002, 2005 - 2007, and 2009. He made payments under this agreement from June 2010 until July 2011. In June 2011, he established an installment agreement to pay his 2010 Federal income taxes. The IRS subsequently cancelled this agreement upon discovery that he had not timely filed his 2010 tax return. He entered into a new agreement, whereby he would pay \$400 a month. “It appears from documentation in the record that Applicant made payments under the plan between May 2012 and February 2013. He made payments in March, April, and May of 2013. It is not clear from the record that he made any payments thereafter.” Decision at 3.

Applicant has a net monthly income of \$3,324, with total monthly expenses of \$3,016. He has not received financial counseling.

The Judge’s Analysis

The Judge cited to evidence that Applicant had failed to file his tax returns for at least tax years 2000 through 2008; that he has held stable employment since 2008; and that the record does not show that his failures to file returns resulted from circumstances beyond his control. Additionally, she noted that Applicant had not had financial counseling and that he appears to be living beyond his means. She stated that Applicant had habitually ignored IRS rules and regulations

for several years. In the whole-person analysis, the Judge cited to evidence that Applicant had not followed his repayment agreements consistently.

Discussion

Applicant states that his payments “have been made without error.” To the extent that he is arguing that the Judge erred in finding that he had not followed his repayment plans, we conclude that the Judge’s material findings of security concern are supported by substantial record evidence or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.,* ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012).

Applicant argues that a repayment plan should not automatically cause a denial of a clearance application. However, there is no basis in the Decision to conclude that the Judge drew adverse inferences from Applicant’s having entered into repayment plans. Rather, she considered evidence that he had not been faithful in making payments under those plans, which was a reasonable interpretation of the record that was before her.

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’anan

Michael Ra’anan
Administrative Judge
Chairperson, 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