

KEYWORD: Guideline F

DIGEST: The totality of Applicant's appeal is simply a disagreement with the Judge's weighing of the evidence and does not demonstrate error. Adverse decision affirmed.

CASENO: 12-04481.a1

DATE: 10/15/2015

DATE: October 15, 2015

In Re:)	
)	
-----)	ISCR Case No. 12-04481
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Sharon Steele, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 23, 2014, 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 June 17, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 attended a university. During his clearance interview, he stated that he had not received a degree. However, in a resume prepared later, he claimed to have a degree from this same university.¹ Applicant’s SOR alleged several delinquent debts, including a Federal tax lien of over \$137,500, a credit card debt, and an installment account. Applicant stated that he had not disclosed this lien in his security clearance application due to an oversight. The Judge concluded that this claim was not credible. Although the SOR did not allege falsification, as with Applicant’s claim to have had a college degree, the Judge considered this matter for other things, as set forth in Footnote 1. Applicant claimed that, after it had reviewed his amended tax returns, the IRS reduced the amount of the lien to \$62,000. Applicant did not corroborate this claim, however.

Applicant attributed his tax problem to his having turned his responsibility to file tax returns over to an accountant. He stated that he received notice from the IRS that, in fact, his returns had not been filed. Upon receiving a series of letters from the IRS, he hired his current accountant. Applicant provided documentation for payment of some of his debts, including creditors not listed in the SOR. Applicant stated that the only financial counseling that he had received was during conversations with his current accountant. Applicant enjoys a good reputation for his fidelity to national security. His character references recommend him for a clearance.

The Judge’s Analysis

The Judge resolved several of the debts in Applicant’s favor, including a smaller lien for Federal taxes. The Judge concluded that Applicant’s tax problems were affected by circumstances outside his control. However, he noted that Applicant had provided no corroboration for his claim that he was resolving the large tax lien. He also stated that Applicant had not provided independent evidence of his contention that the tax lien was too high. The Judge stated that Applicant undermined his own credibility by his claim to have a college degree and his failure to have disclosed his \$137,500 tax lien.

¹The Judge noted that the SOR did not allege falsification. He stated that he was considering this apparent false statement in assessing Applicant’s credibility, evidence in mitigation, rehabilitation, whole-person, etc. *See, e.g.*, ISCR Case No. 09-06771 at 2-3 (App. Bd. Jan. 4, 2011).

Discussion

Applicant contends that the Judge erred in his analysis. Specifically, he argues that he had indeed provided enough evidence of debt resolution to establish mitigation. He cites to a letter from his accountant, for example, as well as to other matters, including his own testimony, his response to the SOR, and his answers to interrogatories. We have considered Applicant's argument in light of the entirety of the record and find therein no reason to disturb the Judge's analysis. The Judge noted Applicant's contention that the larger tax lien had been reduced. However, the letter from the accountant confirmed the existence and legitimacy of Applicant's liens but said nothing about a basis for disputing their amounts. By the same token, an acknowledgment by the IRS that Applicant's financial condition was too perilous to enable him to pay his delinquent taxes does not provide a reason to believe that the amounts sought by the IRS were inaccurate. There is nothing in the record to undermine the Judge's finding that Applicant failed to corroborate his claim that the IRS reduced the large lien to \$62,000. We note Applicant's argument that the Judge mis-stated the account number for a credit card debt in the amount of \$155. However, even if the Judge erred in his findings or analysis of this relatively small debt, it did not likely affect the overall outcome of the case. We have considered the totality of Applicant's appeal argument and conclude that, in essence, it is simply a disagreement with the Judge's weighing of the evidence, which is not enough to undermine the manner in which the Judge evaluated Applicant's case. *See, e.g.*, ISCR Case No. 14-00251 at 4 (App. Bd. Oct. 10, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record, in light of the Judge's material findings and his adverse credibility determination. "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