

KEYWORD: Guideline F

DIGEST: Applicant did not file Federal or state tax returns for the years 2006-2010. Nor did he timely file for several other years. Adverse decision affirmed.

CASENO: 14-03059.a1

DATE: 06/12/2015

DATE: June 12, 2015

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In Re: )  
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----- ) ISCR Case No. 14-03059  
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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 November 7, 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 March 19, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 has worked for a Defense contractor since 1988 and has held a security clearance since 1989. He is currently separated from his wife. Applicant has numerous delinquent debts, for a home foreclosure, Federal income taxes, medical expenses, etc. The Judge found that several of Applicant’s debts had been resolved, including the home foreclosure. He also found that Applicant did not corroborate his claims of having resolved other debts.

Concerning Applicant’s tax problems, in 2006 he withdrew funds from his retirement account, resulting in a \$9,000 tax liability. Applicant did not file his Federal or state tax returns from 2006 through 2010. The IRS filed a lien against Applicant for \$50,354 and garnished his pay. Applicant eventually paid off the lien. Applicant also did not file timely tax returns from 2010 through 2013. In 2014 he eventually filed the returns, but he has not paid the taxes. He has hired a tax service, which is in the process of negotiating a settlement with the IRS.

Applicant has a net monthly remainder of \$501 after expenses. His total income for 2014 was \$98,656. His income for 2015 will be \$102,201. Applicant enjoys a good reputation for honesty and devotion to duty. His performance evaluation rates him “exceeds expectations.” He has child support obligations that will end in October 2015, although he still owes alimony to his wife.

### **The Judge’s Analysis**

As stated above, the Judge cleared Applicant of some of the allegations. However, for the remainder, he concluded that none of the mitigating conditions fully applied. He stated that Applicant’s unresolved debts were numerous and ongoing, that Applicant had not sought financial counseling, and that there is no evidence that his debts are under control. He noted that Applicant did not resolve his tax lien until the IRS garnished his wages and that his tax liability for subsequent years had not been resolved.

In the whole-person analysis, the Judge noted Applicant’s many years of working for a Defense contractor and holding a clearance. He also cited to his employer’s high regard for his work performance. The Judge stated that Applicant was candid and sincere at the hearing but that he

lacked a “firm grasp on his financial situation.” Decision at 9. However, he also stated that Applicant had presented no plausible reasons for having failed to file his tax returns on time.

### **Discussion**

Applicant argues that he has mitigated the security concerns in his case. In doing so, he relies in part on evidence not contained in the record, which we cannot consider. Directive ¶ E3.1.29. He cites to evidence such as his resolution of certain debts, his many years of service, and his having held a clearance for many years without incident or concern. Despite Applicant’s arguments, we note that the Judge made sustainable findings that Applicant had not corroborated at least some of his claims of debt resolution. We also note the Judge’s conclusion that Applicant had not provided a plausible explanation for having failed to file his tax returns in a timely manner. His argument that he had failed to do so due to pressures resulting from his marital separation is not enough to undermine the challenged conclusion. We are required to give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. Applicant’s argument on appeal is not sufficient to rebut the presumption that the Judge considered all of the evidence or to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-06824 at 2 (App. Bd. Apr. 9, 2012). Applicant requests that, in the event we do not find error in the Judge’s decision, we remand the case to enable the Judge to take in new evidence. We do not have authority to remand a case for that purpose. *See, e.g.*, ISCR Case No. 14-00976 at 3 (App. Bd. Feb. 5, 2015). In the alternative, Applicant requests that we grant a probationary clearance. We have no authority to grant a probationary clearance. *See, e.g.*, ISCR Case No. 12-00406 at 5 (App. Bd. Mar. 31, 2014).

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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board