

KEYWORD: Guideline F

DIGEST: Guideline F is not concerned only with the possibility that an applicant might sell classified information to pay his debts. A Judge must examine an applicant’s financial circumstances for what they may reveal about his judgment and reliability. Applicant failed to rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 14-03392.a1

DATE: 04/15/2015

DATE: April 15, 2015

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In Re:)	
-----)	ISCR Case No. 14-03392
)	
Applicant for Security Clearance)	
)	

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 4, 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 February 6, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 been employed by a Government contractor for 32 years. He held a security clearance in the 1980s and 1990s. Married, he has an adult offspring.

Applicant’s SOR alleges several delinquent debts. Applicant states that his problems resulted from mismanagement of his finances. Applicant’s debts were for a delinquent mortgage, medical expenses, and tax delinquencies. Applicant failed to file his Federal taxes for several years. He had two Federal tax liens, one of which, in the amount of \$39,764, has been released. He is making payments on the second one. Applicant entered into an installment agreement with the IRS in 2011, but it was terminated the next year. He entered into another such agreement in 2014. He still owes \$21,720 on the second lien. In addition, Applicant’s wages were garnished for payment of state taxes, a debt now discharged. Applicant has paid the remaining SOR debts.

Applicant and his wife make a combined salary of about \$175,000 a year. They inherited a home worth about \$700,000. Applicant intends to sell this home and use the proceeds to pay his Federal tax obligations. Applicant has had no financial counseling. He enjoys a good reputation for honesty, trustworthiness, and responsibility, as evidenced by his volunteer work in the community.

The Judge’s Analysis

The Judge cleared Applicant of the mortgage and medical debt allegations. However, she reached the opposite conclusions about his taxes. Though acknowledging the extent to which the tax debts have been resolved, she noted that the state debt was paid through garnishment and that Applicant did not undertake to resolve the Federal debts until they had been reduced to liens.¹ She stated that she was not able to conclude that such problems would not recur² and that Applicant’s “habitual unwillingness to follow rules for filing income tax returns raise concerns about his reliability, trustworthiness, and ability to follow rules and regulations[.]” Decision at 7.

Discussion

¹See Directive, Enclosure 2 ¶ 20(d): “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

²See Directive, Enclosure 2 ¶ 20(a): “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment[.]”

Applicant argues that he has never even considered using his access to classified information as a means of obtaining money for debt resolution.³ We construe this as alleging that his circumstances do not raise security concerns, in that he would not compromise classified information to pay his debts. However, the concern under Guideline F is not simply that an applicant might be tempted to commit criminal acts. A Judge must consider the extent to which an applicant's circumstances cast doubt upon his judgment, self control, and other characteristics essential to protecting national secrets. *See, e.g.*, ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). In the case before us, the Judge's findings and record evidence that Applicant had repeatedly failed to file Federal and state tax returns due to financial mismanagement are sufficient to raise security concerns.⁴ We find no error in the Judge's treatment of this issue.

Applicant cites to favorable evidence, such as his having held a clearance in the past and the extent to which he has paid down his debts. This argument is not sufficient to rebut the presumption that the Judge considered all of the evidence or that she mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-09118 at 2-3 (App. Bd. Mar. 25, 2015). A Judge should consider not only the extent to which debts have been paid, but the circumstances underlying them that impugn an applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 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."

³Applicant prefaces this issue by noting Department Counsel's final argument, in which Counsel states that "the indicators are screaming out" that Applicant should not have a clearance. Tr. at 68. To the extent that Applicant has taken umbrage at this statement, we note that argument by counsel is not evidence. *See, e.g.*, ISCR Case No. 02-26976 at 6 (App. Bd. Oct. 22, 2004). We conclude that this comment, viewed in the context of the argument as a whole, did not exceed the bounds of zealous advocacy expected of counsel, and it does not appear to have exerted an improper effect on the Judge's overall decision.

⁴ Department Counsel asked Applicant why he failed to file his state taxes. Applicant replied that it "was stupidity on our part not to do this. I mean, we have no other valid reason but that." Tr. at 42. When asked why he fell into arrears for his Federal taxes, Applicant replied, "Same reasons as the [state]-failure to file." Tr. at 45.

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