

KEYWORD: Guideline F

DIGEST: Considering Applicant’s appeal arguments as a whole, we conclude that the Judge’s material findings of security concern are supported by substantial evidence or constitute reasonable inferences that can be drawn from the evidence. Applicant has pointed to no harmful error that would likely change the outcome of the case. Adverse decision affirmed.

CASE NO: 14-06781.a1

DATE: 12/16/2016

DATE: December 16, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06781
)	
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 June 10, 2015, 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 September 13, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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 erred in ruling upon the

admissibility of evidence; whether the Judge's findings 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

Applicant has several delinquent debts. These include a \$9,200 judgment in favor of a bank. Though Applicant stated that it had been resolved, he provided no corroboration. The Judge cited to a report from a state court system that showed the judgment to be still active. Applicant did not respond to the File of Relevant Material (FORM), and the Judge found that the debt had not been resolved. Applicant also has a delinquent credit-card debt in the amount of about \$5,600. Applicant did not provide evidence to support his claim that the debt has been disputed.

Applicant's record includes a \$5,000 judgment, which he claimed was a duplicate of another debt alleged in the SOR. The Judge stated that Applicant provided no corroboration for his claim that this was a duplicate or that the judgment had been released. Applicant's SOR includes a \$53 delinquency, which he did not show had been resolved. Moreover, Applicant owed back taxes for tax years 2010 through 2012, which have not been resolved. The Judge stated that he accepted as true Applicant's admissions in his security clearance application (SCA) that he owed these delinquent taxes.

The Judge did find that Applicant had addressed some of debts. These include a lien (released) for Federal taxes owed for 2004 through 2006 and a \$7,800 collection account that had been paid. This latter account is the one that Applicant asserted, without corroboration, was identical with the \$5,000 judgment described above.

Applicant has been employed since late 2010 and began working for his own company in early 2013. He attributed his financial problems to a period of unemployment while caring for his dying mother. He also stated that his delinquent taxes and some of his other debts were attributable to his ex-wife, in that she did not file returns and acquired debt without Applicant's knowledge.

The Judge stated that Applicant had not acted on his debts for several years. He did not submit a budget or evidence regarding his income and expenses. He noted Department Counsel's comment in the FORM that Applicant had provided little documentation concerning his debts. Despite this, Applicant elected to submit nothing in response to the FORM.

The Judge's Analysis

Though noting circumstances beyond Applicant's control that affected his debts, the Judge stated that Applicant had not demonstrated responsible action in regard to them. "He submitted little evidence to show how he tried to responsibly adjust his spending or resolve his debts over the following years." Decision at 6. He also stated that Applicant had not provided evidence to corroborate his claim to be in a payment plan with the IRS or to show that he had paid additional back taxes that he admitted owing.

Discussion

Applicant objects to the Judge's admission into the record of Item 6, the state court system report pertaining to the \$9,200 bank judgment. He argues that it does not meet the requirements for any of the hearsay exceptions provided by the Federal Rules of Evidence or otherwise possess any indicia of reliability or authenticity. We review a Judge's evidentiary rulings to see if they are arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-02296 at 3 (App. Bd. Mar. 12, 2014).

The FORM, to which Item 6 was attached, advised Applicant of his right to make a documentary response, including "objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." DOHA's cover letter also advised Applicant that he could make objections to the information in the file and/or "submit any material you wish the Administrative Judge to consider[.]" Cover Letter, dated October 30, 2015. Applicant acknowledged receipt of the FORM and attachments on November 9, 2015. As the Judge found, Applicant did not submit an objection to Item 6 or provide any other response. Accordingly, Applicant waived any objection he might have had to this document. The Judge did not err by admitting and considering Item 6.

Applicant challenges some of the Judge's findings of fact. We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). Applicant notes that the Judge based the finding about delinquent taxes upon Applicant's SCA admissions. He argues that the Judge should also have accepted as factual his statement in the SCA that he has a repayment plan. He argues that the Judge should have found that the \$5,000 judgment had been resolved, insofar as he claimed that it was a duplicate of another debt for which the Judge had entered favorable findings and that Item 6 did not support the Judge's finding that the \$9,200 judgment is unresolved.

Concerning the tax admissions in the SCA, a Judge is not required to accept or reject an applicant's admissions *in toto*. It is within his discretion to view certain admissions as credible but others as less so, and we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. In the SCA, Applicant admitted that he had failed to file and pay Federal taxes for 2010 and file and/or pay Federal and state taxes for 2011 and 2012. For each admission, Applicant stated "I have a repayment plan in place that is currently being executed." Item 3, SCA, at 52-54. His admission to having *a* plan rather than to agreements with both Federal and state revenue agencies leaves unaddressed whether he is actually attempting to resolve the entirety of his tax delinquencies. Moreover, there is nothing in the record to corroborate the existence of a plan or to show when it was approved, what its terms are, whether Applicant has made consistent payments, etc.

Under the facts of this case, the Judge could reasonably have found that admissions of failure to file and pay taxes, which were against Applicant's interest, were worthy of belief but that uncorroborated exculpatory statements were less so. We also find no error in the Judge's treatment of the \$5,000 judgment. Item 5, Credit Report, presents this as a different debt from the \$7,800

collection account that Applicant asserts to be a duplicate.

Applicant challenges the Judge's finding that the \$9,200 judgment was unresolved. He argues that Item 6 does not support such a finding. We agree that it is not abundantly clear from the face of Item 6 how up-to-date its contents may be, although it appears to have been obtained from the state court web site on October 28, 2015, which is the same date as the FORM itself. We also note that the Credit Report, dated April 2014, showed this debt as still owing and that Applicant admitted in his clearance interview later that year that it was unpaid. There is no evidence in the record to show or intimate that this debt has been resolved, other than Applicant's uncorroborated statement in his Answer to the SOR. The challenged finding is consistent with the record viewed in its entirety.

Considering Applicant's appeal arguments as a whole, we conclude that the Judge's material findings of security concern are supported by substantial evidence or constitute reasonable inferences that can be drawn from the evidence. Applicant has pointed to no harmful error that would likely change the outcome of the case. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant has challenged the Judge's mitigation analysis. In a DOHA proceeding, the applicant bears the burden of persuasion that he should have a clearance. Directive ¶ E3.1.15. In this case, Applicant's admissions to the SOR, along with his SCA answers, clearance interview, and credit report are sufficient to raise concerns that he may be lacking in self-control, judgment, or other qualities essential to protecting classified information. Given the evidence that was before him, the Judge did not err in concluding that Applicant had not met his burden of persuasion. Applicant has not rebutted the presumption that the Judge considered all of the evidence, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016). Failure to pay taxes and/or file tax returns suggests that an applicant has a problem with complying with well-established government rules and regulations, voluntary compliance with which is essential for protecting classified information. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board