

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge did not consider all of the evidence, including circumstances outside his control that affected his financial condition, his efforts at debt resolution, and his character reference. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 15-01094

DATE: 11/08/2016

DATE: November 8, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-01094
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 23, 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 hearing. On August 11, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Richard A. Cefola 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 failed to consider all of the evidence; whether the Judge's application of the mitigating conditions was erroneous; and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm.

The Judge's Findings of Fact

Before starting his current job, Applicant owned a business that failed, leaving him with a substantial amount of delinquent debt. His debts include over \$3,600 owed on a credit card account. About two weeks prior to the hearing, Applicant made a first monthly payment of \$100 toward satisfying this debt. In addition, he owes over \$72,000 to the Federal Government in delinquent payroll taxes. In 2010, he entered into an installment agreement to pay \$650 a month toward resolving this debt but did not have the available funds to continue. He has been working with a financial company to address his tax debts but has yet to set up a new payment plan. Applicant also owes nearly \$2,000 on another credit card account. He made his first monthly payment about two weeks prior to the hearing. Applicant provided inconsistent evidence as to his monthly budget surplus. He testified that he had about \$850 at the end of each month, but his written budget showed a surplus of nearly \$3,000.

The Judge's Analysis

The Judge resolved two allegations in Applicant's favor. However, for the debts described above, he entered adverse formal findings. He cited to evidence that Applicant had only recently begun to address his outstanding credit card debts and that, in eight years time, he had not come to an agreement with the Federal Government about his tax delinquencies.

Discussion

Applicant contends that the Judge did not consider all of the evidence, including circumstances outside his control that affected his financial condition, his efforts at debt resolution, and his character reference. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, 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). Applicant draws our attention to a Hearing Office case that he believes supports his efforts to obtain a clearance. We have given this case due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Timing of debt payments is relevant in evaluating an applicant's case for mitigation. *See, e.g.*, ISCR Case No. 14-01243 at 3 (App. Bd. Jun. 18, 2015). 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 Y. Ra’anan
Michael Y. 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