

KEYWORD: Guideline F

DIGEST: Applicant cites to record evidence concerning his problems with his wife and the steps he has taken to pay his debts and file tax returns, specifically noting the email from his tax preparer. He argues that the Judge considered the evidence in a fragmented, piecemeal manner. Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed

CASENO: 15-01772.a1

DATE: 06/07/2017

DATE: June 7, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-01772
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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 22, 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 March 16, 2017, after considering the record, 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 failed to file his Federal and state income tax returns in a timely fashion for tax years 2009 through 2012. He also became delinquent in seven debts, totaling over \$24,000. He attributed his financial problems to his wife's addiction to prescription pain killers. She hid the bills from him and failed to pay them. Applicant also owed her alimony following their separation, which impeded timely resolution of his debts. He attributed his tax delinquencies to his having misplaced necessary paperwork. Although he showed that he had filed his returns from 2011 forward, he did not provide documentation that specifically showed that he had filed those for 2009 and 2010.¹ Applicant demonstrated that he had resolved, or was resolving, three of the seven delinquent debts alleged in the SOR.

Applicant provided no evidence of financial counseling, his current income, a budget, or other indicia of financial responsibility.

The Judge's Analysis

Though noting circumstances that were outside his control that affected his financial problems, the Judge concluded that Applicant had not demonstrated responsible action regarding his annual tax filing obligations. She also noted a paucity of evidence concerning resolution of four of the delinquent debts alleged against him.

Discussion

Applicant cites to record evidence concerning his problems with his wife and the steps he has taken to pay his debts and file his tax returns, specifically noting the email from his tax preparer. He argues that the Judge considered the evidence in a fragmented, piecemeal manner. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it enough 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. 13-00502 at 3 (App. Bd. Mar. 7, 2017). Applicant has referenced a Hearing Office case in support of his appeal. We give due consideration to this case. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 15-01416 at 3 (App. Bd. Feb. 15, 2017). In any event, the case that Applicant cites has significant factual differences from his own. The case provides no reason to disturb the Judge's analysis. Moreover, we conclude that the Judge's whole-person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality

¹Applicant submitted an email from a tax preparer advising that his Federal and state returns "are up to date through 2014 and the 2015 tax returns are on extension." This exhibit included three IRS Form 8326s, acknowledging that Applicant had electronically filed his Federal returns for 2012 through 2014, and the email stated that the one for 2011 had been filed by mail. The exhibit did not explicitly address delinquent returns for 2009 and 2010.

of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 14-06653 at 3 (App. Bd. Nov. 18, 2016).

The Judge examined the relevant evidence 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board