

KEYWORD: Guideline F

DIGEST: Applicant argues that the Government failed to prove he made financial decisions that raised security concerns. This argument lacks merit. The Judge’s material findings about Applicant’s delinquent medical debt and his state tax filing delinquencies for 2011-2013 were based on substantial evidence or constituted reasonable inferences that could be drawn from the evidence. Adverse decision affirmed.

CASE NO: 15-03160.a1

DATE: 05/10/2017

DATE: May 10, 2017

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 15-03160

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 March 24, 2016, 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 16, 2017, after the hearing, Defense Office of Hearings and Appeals 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 erred in his application of the disqualifying and mitigating conditions and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's decision.

The Judge's Findings of Fact

Applicant is a 47-year-old employee of a Government contractor. In his response to the SOR, Applicant neither admitted nor denied the allegations and the Judge considered his responses to be denials. The alleged state tax liens and another debt were listed on credit reports offered into evidence. Applicant satisfied the state tax liens through a wage garnishment.

The SOR alleged that Applicant failed to file his state income tax returns for 2009-2013. He was not required to file a income tax return in the specified state for 2009 and filed for 2010. He has yet to satisfy a past-due medical debt for about \$355 or file state income tax returns for 2011, 2012, and 2013.

The Judge's Analysis

From 2011-2013, Applicant failed to file state income tax returns and accumulated a significant amount of delinquent tax debt. The evidence was sufficient to establish Disqualifying Conditions 19(a) "inability or unwillingness to satisfy debts;" 19(c) "history of not meeting financial obligations;" and 19(g) "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same[.]" Mitigating Conditions 20(a)¹ and 20(b)² are not applicable because Applicant continues to be delinquent on his state tax filings and has failed to address a medical debt. The Judge found in favor of Applicant on the alleged state tax liens.

Discussion

Much of Applicant's Appeal Brief addresses matters that are not contained in the record of the proceeding. Specifically, he contends "at the time of the Administrative Judge's decision the . . . evidence in the record was incomplete" (Appeal Brief at 3) and proceeds to make arguments based on purported events for which no evidence was presented to the Judge for consideration. Those purported events and the arguments based on them constitute new evidence that the Appeal Board cannot consider. *See*, Directive E3.1.29.

Applicant argues that the Government failed to prove he made financial decisions that raised

¹ Directive, Enclosure 2 ¶ 20(a) states: "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, and good judgment[.]"

² Directive, Enclosure 2 ¶ 20(b) states: "the conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

security concerns. This argument lacks merit. As the Judge found, credit reports admitted into evidence established the delinquent medical debt. *See, e.g.*, ISCR Case No. 11-00046 at 2 (App. Bd. Feb. 10, 2012) for the proposition that it is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the Government's burden of production under Directive E3.1.14. In his security clearance application, Applicant disclosed that he did not file his 2011 and 2012 state income tax returns as required. Government Exhibit (GE) 1. His background interview established his state tax filing delinquency for 2013. GE 2. In his post-hearing submission, he stated that he "failed to follow up on an extension to file [his] individual state tax returns for 2011 through 2013" and that his accountant "is prepared to provide them" . . . "in order to conclude my obligations in this matter." Applicant Exhibit K. The Judge's material findings about Applicant's delinquent medical debt and his state tax filing delinquencies for 2011-2013 were based on substantial evidence or constituted reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Moreover, the Directive presumes there is an nexus between proven facts under any of the Guidelines and an applicant's eligibility for a security clearance. *See, e.g.*, ISCR Case No. 15-02903 at 2 (App. Bd. Mar. 9, 2017). We find no error in the Judge's conclusion that Disqualifying Conditions 19(a), 19(c), and 19(g) apply in this case.

Applicant also argues for application of Mitigating Condition 20(d)³ and, in doing so, cites to his resolution of the past-due state taxes. We note that the Judge found in favor of Applicant on the alleged state tax liens because they were paid through a wage garnishment. We find no error in the Judge not addressing Mitigating Condition 20(d) during his analysis of Applicant's medical debt or state tax filing delinquencies.

Applicant asserts the Judge erred in excluding from evidence a state document pertaining to his amendment of his 2014 state income tax return. After the hearing, the Judge left the record open until September 12, 2016, for Applicant to submit additional matters. During that period, Applicant submitted two documents that were admitted into evidence. On January 2, 2017, almost four months after the record closed, Applicant submitted the document in question. Department Counsel objected to the document, and the Judge did not admit it into evidence. 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). We find no error in the Judge excluding from evidence the document in question. We also note no SOR allegation pertains to either Applicant's filing of a state income tax return for 2014 or his payment of state taxes for that year.

The balance of Applicant's arguments amount to claims that the Judge did not consider all the evidence or mis-weighed the evidence. These arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Additionally, we find no basis for concluding the Judge erred in his whole-person analysis.

³ Directive, Enclosure 2 ¶ 20(d) states: "the individual initiated good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

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 filing tax returns 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. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board