

KEYWORD: Guideline F

DIGEST: We find no error in the Judge’s findings of fact regarding Applicant’s taxes. The Judge’s material findings are supported by substantial evidence. Adverse decision affirmed.

CASENO: 15-03995.a1

DATE: 4/24/2017

DATE: April 24, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-03995
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Crystina M. O’Brien, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 17, 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 1, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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's findings of fact contained errors; whether the Judge failed to consider significant favorable record evidence; 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 held a clearance since 2004. Divorced, he has two adult children. His wife left him in 2004, leaving him with a number of marital debts. His daughter was diagnosed with a serious autoimmune disorder, his father was killed in an accident, his mother died, and his brother contracted a serious illness, all within a relatively short period of time.

Applicant stated that the stress of these events resulted in his delaying to file Federal and state tax returns for tax years 2007 through 2015. The Judge noted that the SOR alleged delinquent filing for 2009 and 2010. He stated that he would consider the non-alleged conduct for such limited purposes as extenuation, mitigation, rehabilitation, and the whole-person analysis. Applicant hired an accountant, who filed the past-due returns in 2016. Applicant did not actually owe taxes for 2007 through 2015, but he forfeited his refunds due to his failure to file in a timely manner.

In addition, Applicant took out student loans on behalf of his daughter. He fell behind on one loan in about 2006 and paid it off in 2016, shortly before the hearing. He used some proceeds from his mother's estate as well as his own saving to pay the debt.

Applicant makes about \$105,000 a year and has a net monthly remainder of about \$1,000. He has about \$17,000 in savings. He is current on his expenses and his credit report discloses no adverse entries. Applicant enjoys a good reputation for his professionalism. His character witnesses stated that he has never shown irresponsible behavior and is not a threat to national security.

The Judge's Analysis

The Judge resolved one allegation in Applicant's favor, a relatively small one for cell phone services. However, he characterized Applicant's financial problems as numerous and recent. He concluded that the underlying circumstances did not suggest that the problems were unlikely to recur. Though noting Applicant's divorce and the medical problems that his family suffered, the Judge found that Applicant had not demonstrated responsible effort in regard to his delinquent debts. Though noting that Applicant has filed his tax returns and paid the student loan, he stated that past financial irresponsibility cannot be mitigated by payment of debts under threat of loss of a clearance.

Discussion

Applicant challenges some of the Judge's findings. He argues that he has held a clearance since 1979 rather than 2004, as the Judge found. The Judge's finding appears to be based upon Applicant's answer on his security clearance application. Government Exhibit 1 at 24. We note that during his clearance interview, Applicant stated that he had previously been investigated by the DoD in 1979. Government Exhibit 2 at 2. This summary does not elaborate on whether Applicant has

held a clearance continuously since then. Even if the challenged finding is erroneous, however, it did not likely affect the outcome of the case. Therefore, it was harmless error. *See, e.g.*, ISCR Case No. 15-00535 at 3 (App. Bd. Mar. 13, 2017).

Applicant also states that he did not fail to pay his taxes, only to file his returns, although the Judge entered an adverse finding under the SOR allegation that he had failed to file and pay taxes for 2009 and 2010. We note first of all that Applicant admitted this allegation in his Response to the SOR, without any qualification or explanation. In any event, the Judge's findings and analysis address only Applicant's failure to file his returns. The Judge made no reference to any alleged failure to have paid taxes. We find no error in this aspect of the Judge's findings of fact. Applicant also argues that his personal difficulties extended over a longer period of time than the Judge found. All in all, the Judge's material findings are supported by substantial evidence. Applicant has cited to no harmful error in the Judge's findings. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

Applicant cites to evidence such as his having finally resolved his financial delinquencies, the many difficulties that Applicant experienced affecting his situation, etc. He also cites to comments in the interview summary to the effect that Applicant lives within his means, intends to pay his debts, and that there is nothing in his background that would leave him open to blackmail. These statements are the investigator's summary of Applicant's answers during the interview, not the investigator's own findings of fact, as Applicant contends. In any event, even if an investigator offered such opinions they would not bind the DoD in its evaluation of an applicant's case. *See, e.g.*, ISCR Case No. 15-00535, *supra*, at 4. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

DATE: 04/24/2017