

KEYWORD: Guideline F

DIGEST: Applicant testified that his current Federal tax debt is about \$98,000. Applicant’s tax debts are recent, and have been unresolved since at least 2008. Adverse decision affirmed.

CASENO: 15-08711.a1

DATE: 08/24/2017

DATE: August 24, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-08711
)	
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 9, 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 May 31, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He testified that his current Federal tax debt is about \$98,000. His financial problems arose due to two business failures. The first business failed in approximately 2006. The second business operated from about 2009 to 2014, when his business partner passed away and the business lost a major contract to a competitor. In 2014, he retained a tax attorney to handle his tax issues. In late 2016, the attorney submitted a letter stating he is working toward establishing a payment plan with the IRS to resolve the tax debt for 2008-2015 and the matter would be resolved in January 2017. In February 2017, the attorney provided a follow-up letter advising an agreement was reached for Applicant to pay about \$1,200 monthly for 84 months, beginning in March 2017. No documentation was submitted of the agreement or of any payments.

Applicant currently owes about \$98,000 on student loans that he claims are in forbearance and not delinquent. He admitted the loans were delinquent from time to time starting in 2006. He documented that he started to resolve the student loans through a repayment plan and has made four or five payments of about \$300.

Applicant refuted an SOR allegation that he did not timely file his 2013 Federal income taxes. He also resolved some of the alleged delinquent debts. He and his wife have a combined gross income of about \$120,000. He provided budgets for a two-month period showing he had about \$100 of discretionary income each month. He has taken a financial course. He presented character statements that reflect he has a reputation for being honest, loyal, trustworthy, and hard working.

The Judge's Analysis

Applicant's tax debts are recent, have been unresolved since at least 2008, and cast doubt on his reliability, trustworthiness, and good judgment. While he provided correspondence from an attorney concerning a repayment plan, he did not provide proof of the plan or of any payments. He only recently started making continuous payments on his student loans. It is too soon to conclude that his student loans are being resolved or are under control. He has not established a meaningful track record of financial responsibility in paying his student loans or Federal tax debt.

The failure of Applicant's businesses and the death of his partner were events beyond his control. Although his tax problems date back to 2008, he failed to obtain professional tax assistance until 2014 and an agreement with the IRS was not reached until February 2017. These delays were not responsible conduct.

Discussion

Applicant contends the Judge noted that he and his wife have a combined annual income of \$120,000, but the Judge did not indicate that was not their income for the entire period in question. We find no error in the Judge's finding about Applicant's annual income. From our reading of the decision, it was apparent the \$120,000 was Applicant's recent income because the Judge had already discussed Applicant's business failures in 2006 and 2014.

Applicant argues the Judge did not consider important aspects of the case. For example, he cites to circumstances outside his control such as the economic volatility of the past 14 years and that he is a person of high moral character. His arguments, however, are not sufficient to rebut the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Moreover, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance determination. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01652 at 2 (App. Bd. Jul. 7, 2017).

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 Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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