

KEYWORD: Guideline F

DIGEST: Applicant cites to favorable evidence, such as her having held a clearance for many years without incident or concern. Her 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. She also states that without a clearance she will not have a job. We are not permitted to consider the impact of an unfavorable decision. Adverse decision affirmed.

CASE NO: 15-08782.a1

DATE: 04/05/2017

DATE: April 5, 2017

In Re:	)	)	
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	)	)	
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 8, 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 January 26, 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 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 did not file Federal or state income tax returns for nine years. In addition she owes back taxes to the IRS.<sup>1</sup> The IRS filed a notice of intent to levy her state tax refunds or other property to satisfy her debt. Applicant attributed her problems to stress and anxiety following a marital separation. She stopped filing returns because of her concern about not being able to pay her tax debt. In August 2016, Applicant requested an installment agreement from the IRS. That agency approved an agreement whereby Applicant would pay \$100 each month toward the satisfaction of her debt. Applicant submitted evidence of one payment in October 2016. Although Applicant believes that she owes no tax to her state, she has not contacted state authorities or filed her state tax returns.

Applicant's annual salary is about \$42,000. She has no savings or retirement funds. She was not certain about how much she had left over after monthly expenses.

### **The Judge's Analysis**

The Judge concluded that Applicant's tax problems did not result from unusual circumstances. He stated that she did not corroborate her claim that anxiety attacks affected her ability to file her returns and noted that she had not sought or received financial counseling. Though acknowledging her payment agreement with the IRS, the Judge stated that Applicant had not demonstrated a track record of timely compliance with tax laws. In the whole-person analysis, the Judge cited to Applicant's having held a clearance for many years. However, he concluded that her failure to file and pay taxes when due suggests that Applicant has trouble complying with government rules and lacks the judgment and reliability expected of those who have access to classified information.

### **Discussion**

Applicant's appeal brief includes documents from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant cites to favorable evidence, such as her having held a clearance for many years without incident or concern. 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,

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<sup>1</sup>Applicant admitted an SOR allegation that she owed the IRS \$10,000. Tax transcripts that Applicant submitted show delinquent taxes of a little over \$5,700. However, as the Judge noted, Applicant did not submit any information about her 2014 Federal income tax obligation. Decision at 2.

or contrary to law. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). Applicant states that without a clearance she will not have a job. We are not permitted to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

The Judge examined the relevant evidence 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 and 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. 14-06808 at 2 (App. Bd. Nov. 23, 2016). 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