

KEYWORD: Guideline F

DIGEST: We conclude that the Judge’s material findings are consistent with the record that was before her. Even if the Judge erred in some of her findings, any such errors are harmless in that they did not likely affect the outcome of the case. Adverse decision affirmed.

CASENO: 16-01871.a1

DATE: 07/14/2017

DATE: July 14, 2017

In Re:)	
)	
-----)	ISCR Case No. 16-01871
)	
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 July 18, 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 8, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 has been employed by various Defense contractors since 2004. He failed to file timely state and/or Federal income tax returns for tax years 2011 through 2014. He stated that he was unable to do so because of a dispute with his mortgage company over the amount of property tax he paid on his home. He stated that he stopped paying on the mortgage when the matter was in litigation. In his clearance interview, Applicant stated that he got behind in paying his mortgage when his wife lost her job and he did not have the money to make payments. At the hearing he testified that he was not behind on his mortgage but was being overcharged by the lender.

Applicant provided no evidence that would show that his tax returns have been filed. The lender foreclosed on his house and that account is now closed. Concerning another SOR debt, the Judge cited to a document that Applicant submitted pertaining to this debt but noted that the exhibit does not show that the debt has been paid.

The Judge's Analysis

The Judge stated that Applicant's delinquent debts and tax filings cast doubt upon his current reliability, trustworthiness, and good judgment. Although Applicant's wife became unemployed, which was a circumstance beyond his control, there is no clear nexus between that event and Applicant's failure to file his tax returns. Applicant has been aware of his delinquent debts since 2015, but he failed to address them until over a year later, after he had received the SOR. The Judge concluded that this did not demonstrate a good-faith effort to pay debts. In the whole-person analysis, the Judge cited to Applicant's military service and his many years of employment by Federal contractors. However, she noted Applicant's delinquent debts and his failure to have resolved his tax problems as of the close of the record.

Discussion

Applicant takes issue with some of the Judge's findings of fact. For example, he states that he has worked for contractors since 1996 rather than 2004, and he denies that his wife's loss of income was the principal issue underlying his mortgage problems. We conclude that the Judge's material findings are consistent with the record that was before her. Even if the Judge erred in some of her findings, any such errors are harmless in that they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 15-00535 at 3 (App. Bd. Mar. 13, 2017). Applicant notes a phrase in his interview summary to the effect that there is nothing in his background that could lead to blackmail, etc. This represents Applicant's answers to the interviewer's questions, not the interviewer's opinion as to Applicant's worthiness for a clearance. In any event, even if an investigator offered such an opinion it would not bind the DoD in its evaluation of Applicant's case. *See, e.g.*, ISCR Case No. 15-00535, *supra*, at 4 (App. Bd. Mar. 13, 2017).

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, 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board