

KEYWORD: Guideline F

DIGEST: Applicant has debts to the Federal and to his state government for unpaid taxes and child support. He failed to file Federal and state income tax returns in a timely fashion for 2009 and for 2011 through 2013. He filed for Chapter 7 bankruptcy and was discharged in 2016. Adverse decision affirmed.

CASENO: 16-02473.a1

DATE: 08/22/2017

DATE: August 22, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-02473
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq. , Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 16, 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 decision on the written record. On June 28, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 last held a security clearance in the 1970s when he worked for a Defense contractor. He has debts to the Federal and to his state government for unpaid taxes and child support. He failed to file Federal and state income tax returns in a timely fashion for 2009 and for 2011 through 2013. He filed for Chapter 7 bankruptcy and was discharged in 2016.

Applicant's IRS transcripts show that his 2009 and 2010 returns were filed in 2011; his 2011 return in 2013; and his 2013 and 2014 returns in 2015. Applicant did not provide copies of signed tax returns. He has an agreement with the IRS to repay his Federal tax debt in monthly increments of \$100. He has not corroborated his claimed compliance with the plan. In addition, he states that he has \$5 per week deducted from his pay to pay off his tax debt to his state.

Applicant owes money to his state for delinquent child support, although he disputes the amount. The SOR alleges nearly \$54,000, but Applicant contends that the amount is about \$10,000. He consulted an attorney to represent him in his child support case, but he could not afford to retain him. In early 2016, Applicant discharged nearly \$105,800 in liabilities.

The Judge's Analysis

The Judge concluded that Applicant's financial problems are significant and that he did not take appropriate and responsible action in regard to them. Applicant presented no evidence showing the state of his current financial situation or that he has received financial counseling. Applicant has not shown that his bankruptcy has resolved his tax and child support delinquencies.

Discussion

Applicant's brief includes information and documents from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant cites to his evidence that he had filed his Federal tax returns and that he had set up deductions to pay his back taxes. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *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. 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board