

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge erred in his whole-person analysis. He cites to his job losses, wife’s death following chronic health problems, the death of other family members, and other family issues. The Judge, however, made findings about many of the matters that Applicant is raising on appeal. Applicant’s arguments are neither sufficient to rebut the presumption that the Judge considered all of the record evidence nor enough to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-02884.a1

DATE: 04/26/2018

DATE: April 26, 2018

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 29, 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, 2018, after the hearing, 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 is a 55-year-old employee of a defense contractor. From 1999 to 2009, he worked for another defense contractor before being terminated for performance issues. He incurred a tax penalty when he withdrew the proceeds from his retirement account to pay debts. He was unemployed for about eight months before obtaining his current job in late 2009.

From 1983 to 1996, Applicant served as an officer in the U.S. military and received an honorable discharge. In 1995, he married his third wife who suffered from a serious illness, was medically retired in 2013, and passed away in 2015. In his post-hearing submission, Applicant noted he suffered “some ‘extremely rough times’ in the past ten years, including job losses, family separation, health problems, a runaway teenager, death of in-laws . . . , sibling family drama, an out-of-state custody battle for his grandson, and his spouse’s death.” Decision at 3.

The SOR alleged that Applicant had a Federal tax lien for about \$57,000, failed to file income tax returns and pay taxes when due for 2009 and 2010, and owed about \$19,000 for two delinquent debts. In a background interview, Applicant also noted he failed to file and pay his 2011 Federal and state taxes on time. He was unsure of how to account for the 2009 retirement account tax penalty, and his inaction snowballed until he consulted with a tax relief company. His adjusted gross income for 2009 was about \$150,000 and for 2010 was about \$138,000. In 2013, he filed his 2009 and 2010 income tax returns and paid the tax relief company about \$7,000 to negotiate a settlement with the IRS, but the tax debt was never reduced. He failed to provide documentary evidence supporting his claim that he started a repayment plan with the IRS.

At the hearing, Applicant claimed he had been making installment payments of almost \$1,000 through the tax relief company, stopped using that company, and hired another in 2015 to negotiate a new payment plan with the IRS. He provided documentation showing a new payment plan was to begin in October 2016 under which he would make monthly payments of \$235 for taxes owed from 2009 to 2014. He provided no proof of payments under the plan.

In 2013 and 2015, Applicant hired debt management companies to negotiate settlements for other debts. A settlement agreement was negotiated for one of the alleged debts, but no documentation of payments was submitted.

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

Applicant has a long history of financial problems. He has had relatively steady employment and failed to demonstrate that he acted responsibly in addressing his taxes and delinquent debts. He failed to provide documentation of debt payments. Although his state tax debts appear to be recently resolved, none of the mitigating conditions fully apply. His financial stability and decisions raise significant security concerns.

### **Discussion**

In his appeal brief, Applicant provided letters of reference and “a more in-depth explanation of [his] ‘extremely rough times[.]’” Those reference letters and other information not previously presented to the Judge for consideration constitute new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

Applicant contends that the Judge erred in his whole-person analysis. In his arguments, he cites to his job losses, wife's death following chronic health problems, the death of other family members, and other family issues. The Judge, however, made findings about many of the matters that Applicant is raising on appeal. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the record evidence nor enough to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017). Applicant has not established that the Judge committed harmful error.

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. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board

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