

KEYWORD: Guideline F

DIGEST: Applicant has submitted a document showing that he has paid his taxes for the tax year ending December 31, 2015. This is new evidence, which we cannot consider. Also, this document has no bearing upon his 2005 tax delinquency. He cites to two mitigating conditions. After examining the record as a whole we find no reason to undermine the Judge's analysis. Disagreement with a Judge's weighing of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Applicant states that he has not had a job since he lost his clearance. We are not permitted to consider the impact of an adverse decision. Adverse decision affirmed.

CASENO: 16-00569.a1

DATE: 01/16/2018

DATE: January 16, 2018

In Re: ----- Applicant for Security Clearance))))))))	ISCR Case No. 16-00569
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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 decision on the written record. On October 12, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 steadily employed since 2002, except for a period of unemployment from 2009 to 2010. He has held a clearance for many years. His SOR alleges debts to his state taxing authority and to the IRS. The Federal delinquency, including penalties, was about \$52,000 as of the date of Applicant’s clearance interview. Applicant resolved his tax debt to his state. However, the Judge found that he has not demonstrated resolution of the debt to the Federal Government. Although he claimed that his debt to the IRS had been reduced to about \$15,000 through a payment arrangement, he provided no documentary corroboration. He hired a lawyer to dispute his tax debts.

Applicant purchased two rental properties, but his tenants did not pay their rent. In 2005, he withdrew funds from his equity accounts for repairs and expenses. The properties were eventually sold through foreclosure, and the equity transactions were considered income that Applicant had not reported. Applicant stated that this tax debt was assessed during his period of unemployment. One of Applicant’s exhibits is a letter from the IRS stating that he owed about \$5,000 for tax year 2011. It made no reference to his 2005 tax obligation that is the subject of this case. Applicant provided no budget or other information about his ability to resolve his debts, although he did take a financial counseling course through his church.

The Judge’s Analysis

The Judge resolved the allegation about Applicant’s state tax debt in his favor. However, she entered adverse findings regarding his 2005 Federal tax delinquency. She stated that he had not provided evidence from the IRS setting forth a payment plan, nor did he present evidence of a basis to dispute his debt. The Judge cited to evidence of Applicant’s period of unemployment and to his

problems with his tenants. She found that he had not submitted sufficient information about his Federal tax debt to show that it is being resolved.

Discussion

Applicant has submitted a document showing that he has paid his Federal taxes for the tax year ending December 31, 2015. This is new evidence, which we cannot consider. Directive ¶ E3.1.29. In any event, this document has no bearing upon Applicant's 2005 tax delinquency. Applicant cites to two mitigating conditions. However, after examining the record as a whole we find no reason to undermine the Judge's analysis. Disagreement with a Judge's weighing of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, 15-07062 at 2 (App. Bd. Nov. 21, 2017). Applicant states that he has not had a job since he lost his clearance. We are not permitted to consider the impact of an adverse decision. *See, e.g.*, ISCR Case No. 16-01787 at 2 (App. Bd. Nov. 22, 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