

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant cites to a Hearing Office case that he believes supports his effort to obtain a favorable decision. We give due consideration to this case as persuasive authority. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. Adverse decision affirmed.

CASENO: 16-00908.a1

DATE: 06/08/2018

DATE: June 8, 2018

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In Re:	)	
-----	)	ISCR Case No. 16-00908
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 30, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 7, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is currently employed by a Defense contractor. He has worked for other Defense contractors in the past and served in the U.S. military from 1996 until late 2003. He has held a clearance since 1996. Applicant is married, with two stepchildren and an adult child from a previous marriage. He experienced three months of unemployment in 2011.

Applicant’s SOR alleges two tax liens in favor of the IRS and two in favor of his state taxing authority. Applicant acknowledged one of these liens, a state tax lien filed in 2011. He has sent the state a request for a payment plan, but it has not yet been authorized. He denied responsibility for the other liens and claimed that he had filed the proper tax returns. Applicant also claimed that he searched for his tax records but could not find them. The SOR also alleges two delinquent credit card debts. One of them has been forgiven and the other is the subject of a payment plan.

Applicant attributed his financial problems to six or seven deployments that he served from 2007 until 2017. He claimed that mail service to his deployed location was sporadic and he did not receive his mail on occasion. He claims that, upon return from deployment in 2017, he attempted to contact the IRS but had no success. He also attempted to contact his CPA in search of information about his taxes. The record contains no documentation from Applicant’s CPA.

Applicant stated that he had signed up for financial counseling, although he did not provide corroborating information. Applicant received numerous awards and decorations while in the military, and his employer considers him to be trustworthy, dependable, and “a model employee.” Decision at 5. He signed a statement promising to pay his taxes in the future and consents to automatic revocation of his clearance should he fail to do so.

### **The Judge’s Analysis**

The Judge noted evidence that Applicant has been aware of his financial problems for several years but has taken little to no action to resolve them, raising questions about his judgment. Though

citing to evidence of Applicant's unemployment, which was a circumstance outside his control, the Judge concluded that he had not shown responsible action in regard to his debts, nor had he shown any good-faith effort to resolve his problems. The Judge stated that Applicant had provided no evidence to corroborate his claim not to owe three of the four alleged tax liens. Moreover, the one lien that he has addressed was the subject of a payment plan submitted just before the hearing.

In the whole-person analysis, the Judge cited to Applicant's favorable evidence, such as his military awards and his good reputation for the quality of his current job performance. However, the Judge stated that Applicant, by his own admission, had taken little action to pay his debts or otherwise resolve them. He concluded that Applicant had, for the most part, neglected his financial problems.

### **Discussion**

Applicant cites to his mitigation evidence, such as the poor mail service that he experienced during deployments. He also cites to his many years of Government service without a security incident and his history of good duty performance, both in the military and as a contractor. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-01077 at 2-3 (App. Bd. Apr. 25, 2018).

Applicant cites to a Hearing Office case that he believes supports his effort to obtain a favorable decision. We give due consideration to this case as persuasive authority. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 16-01077, *supra*, at 3. The case that Applicant has cited has some significant differences from his own. For example, the financial problems at issue in the cited case bore an apparently closer nexus to circumstances outside the applicant's control than are evident in the one before us. The case that Applicant has cited does not supply a reason to reverse the Judge's decision.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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