

KEYWORD: Guideline F

DIGEST: Although an absence of prior security violations is a matter that a Judge should consider, along with all the other evidence in the record, it does not preclude a Judge from concluding that an applicant's circumstances present security concerns that the applicant failed to mitigate. The Government does not have to wait until an applicant has compromised or mishandled classified information before it can deny the applicant a clearance. Adverse decision affirmed.

CASENO: 16-01131.a1

DATE: 04/19/2018

DATE: April 19, 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 July 4, 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 18, 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 unfavorable decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

The SOR alleged that Applicant had 16 delinquent debts totaling over \$143,000. The SOR also alleged that he failed to file his 2009 Federal income tax return, but the Judge found in favor of him on this allegation because it was not substantiated. Applicant failed to pay his Federal income taxes from 2006 to 2008 because his large overseas investment failed to pay an expected return. Additionally, an employer failed to pay Applicant for work he performed in 2009. He also experienced periods of unemployment of about 11 months in 2013 and 2014 and about three months in 2015.

The Internal Revenue Service (IRS) filed tax liens against Applicant in 2007, 2008, and 2009. In 2013, Applicant hired a tax-relief attorney, but he had a dispute with the attorney over her fees. In 2014, he hired a professional tax advocate who determined he owed the IRS over \$158,000 in unpaid taxes, interest, and penalties. The IRS involuntarily seized money from his bank account and withheld his income tax refunds before placing him in a temporary “currently not collectable” status. He indicated that he did not intend to file an offer in compromise, but he could allow the statute of limitations to expire so that he will avoid paying anything further.

After suffering two heart attacks in 2013, Applicant incurred small medical bills that his insurance did not cover and he did not pay. He disputed these debts. At the hearing, however, he acknowledged them, stated he would pay them, but provided no evidence of payments, written disputes, or other resolution. He did provide evidence that state tax liens against him were issued in error and withdrawn. He received a Chapter 7 bankruptcy discharge in 2004, which is not alleged in the SOR.

Applicant has a long history of financial irresponsibility. His delinquent debts are numerous and ongoing. Despite his recent steady employment since 2015, he has not acted responsibly in addressing his debts and has not demonstrated an intent to resolve his Federal tax debt. His unresolved debts, particularly his Federal tax obligations, reflect poorly on his financial management

decisions. He has not shown that he is financially stable and able to address his financial problems. While he resolved his state tax debt, none of the mitigating conditions fully apply.

### **Discussion**

Applicant contends the state tax debts were wrongly assigned to him and were removed. We note, however, that the Judge found in favor of Applicant on the state tax liens, which were the only alleged state tax debts.

Applicant also contends that he is not a security risk and has never done anything to undermine the Government. Although an absence of prior security violations is a matter that a Judge should consider, along with all the other evidence in the record, it does not preclude a Judge from concluding that an applicant's circumstances present security concerns that the applicant failed to mitigate. The Government does not have to wait until an applicant has compromised or mishandled classified information before it can deny the applicant a clearance. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015).

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. For example, Applicant discusses the circumstances that led to his financial problems and his efforts to resolve them, including that he contacted an IRS advocate regarding his Federal tax debt. These arguments, however, 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 is 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. 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