

KEYWORD: Guideline F

DIGEST: Applicant owes over \$43,000 to his state and a little over \$11,700 to the IRS for back taxes. Applicant’s brief cites to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Adverse decision affirmed.

CASENO: 16-01828.a1

DATE: 02/26/2018

DATE: February 26, 2018

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In Re:)	
)	
-----)	ISCR Case No. 16-01828
)	
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 August 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 hearing. On November 14, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Kilmartin 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 works for a Federal contractor in an overseas location. He served in the military until his retirement in 2009. Divorced, he remarried and has four adult children. Applicant held clearances while on active duty. Applicant owes over \$43,000 to his state and a little over \$11,700 to the IRS for back taxes. Applicant attributed his tax problems to overseas deployments, his employer having improperly completed his W-4, a period of unemployment from late 2013 to late 2014, and to his reliance upon his uncle to file his returns. Although the uncle had been trained as a tax preparer, Applicant described him as “reclusive, prone to panic attacks, and possibly suffering from dementia.” Decision at 3. Applicant stated that he had hired a tax lawyer to assist him in resolving his problems, but did not describe the services provided or work performed.

The Judge held the record open after the hearing to enable Applicant to submit evidence about the release of tax liens and the nature of his uncle's tax work on his behalf. However, Applicant's submission was not responsive. Applicant's monthly take-home pay is about \$8,000 plus another \$3,000 for his retirement and disability pay. After paying expenses, he has about \$8,000 left over at the end of each month. He provided no evidence of financial counseling or other such assistance. Applicant has served the nation for over 30 years, including multiple overseas deployments.

The Judge's Analysis

The Judge found that Applicant's overseas service, with its limited communication, was a condition beyond his control. However, the Judge also found that Applicant had not provided evidence of responsible action in regard to his debts. Although he had been aware of his tax problems for several years, he had not resolved them as of the close of the record. The Judge noted Applicant's exemplary service to the U.S. but concluded that Applicant has not squarely addressed the allegations against him and has not met his burden of persuasion.

Discussion

Applicant's brief cites to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He describes his military career and his service as a contractor, his uncle's difficult circumstances, and his efforts at resolving his tax problems. Applicant has not rebutted the presumption that the Judge considered all of the evidence, 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. 17-00257 at 3 (App. Bd. Dec. 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board