

KEYWORD: Guideline F

DIGEST: . Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. His arguments, in effect, amount to a disagreement with the Judge’s weighing of the evidence and are not sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 16-02868.a1

DATE: 06/08/2018

DATE: June 8, 2018

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 16-02868
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**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 October 23, 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 March 16, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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.

### **Summary of the Case**

The Judge summarized the case as follows:

[Applicant] failed to timely file state income tax returns for tax years 2008 through 2014. He likewise failed to timely file federal income tax returns for tax years 2012, 2013, and 2014. Taken together, these matters reflect a recent or recurring pattern of irresponsibility, lack of judgment, or unwillingness to abide by rules and regulations. He filed the past-due returns with the IRS in April 2016 and with the state in April 2017, and he is now in compliance with both tax authorities. Nevertheless, it is too soon to tell if his long-standing pattern of behavior is a thing of the past or is a firmly established part of his character. Accordingly, this case is decided against Applicant.<sup>1</sup>

### **Discussion**

Applicant argues that the Judge did not consider all relevant evidence and failed to apply properly the mitigating conditions, particularly ¶ 20(b)<sup>2</sup> and ¶ 20(g).<sup>3</sup> In support of his arguments, he cites to, among other matters, his resolution of the alleged tax issues, his wife’s health problems that resulted in him taking over responsibility for tax matters, his health problems, and his submission of a statement of intent pledging never to fail to pay his taxes when due. The Judge,

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<sup>1</sup> Decision at 1.

<sup>2</sup> Directive, Encl. 2, App. A ¶ 20(b) states, “the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]”

<sup>3</sup> Directive, Encl. 2, App. A ¶ 20(g) states, “the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.”

however, made findings about those matters. Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-06494 at 3 (App. Bd. Oct. 5, 2017). His arguments, in effect, amount to a disagreement with the Judge’s weighing of the evidence and are not sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* We gave due consideration to the Hearing Office case that Applicant cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.*

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 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