

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge erred in his findings and conclusions. Specifically, he says he filed his 2014 tax returns, that he paid the credit card debt, and that his “bankruptcy is satisfied.” Applicant does not identify, and we are unable to find, any evidence in the record that supports those claims. On the contrary, he testified that he was not sure about his 2014 tax filing and that the bankruptcy was dismissed for failing to make payments. Adverse decision affirmed.

CASENO: 16-03569.a1

DATE: 05/15/2018

DATE: May 15, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-03569
)	
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 January 23, 2017, 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 February 15, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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 erred in his findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge’s decision.

The Judge’s Findings of Fact

The SOR alleges unfiled tax returns, a dismissed bankruptcy, and delinquent debts, including unpaid judgments and a mortgage loan in foreclosure. Applicant admitted the SOR allegations. In about 2012, he fell behind on his debts because he was supporting family members and paying his girlfriend’s (now his wife’s) bills. In 2015, he filed for a Chapter 13 bankruptcy that was dismissed when he was unable to make the first payment.

A homeowners association (HOA) obtained two judgments against Applicant: one for about \$1,200 and the other for about \$1,000. He testified that the judgments were paid through a garnishment, but provided no documents showing they were satisfied. He also has a charged-off credit card debt that remains unresolved.

Applicant failed to file his 2014 state and Federal income tax returns as required. He provided no proof that he filed those tax returns. He also acknowledged that he had not filed his tax returns for 2016, which were due months before the hearing. If he owes taxes, he sometimes waits a year before filing the tax returns.

Applicant had a state tax lien for about \$1,200 and owed about \$8,000 in past-due state taxes for 2009-2014. He also owed about \$15,000 in past-due Federal taxes for those same years. He initially sought assistance from a tax relief organization, but it charged too much. In December 2017, he made \$2,000 payments on both his state and Federal tax indebtedness. He testified that he intended to take out a loan from his 401(k) account to pay the tax debts.

Applicant moved in with his wife about three months before the hearing. He earns annually about \$52,000, receives an annual pension of about \$43,000, and estimates his wife earns about \$1,500 a month. Since they began living together, his finances have improved. He estimated he has monthly discretionary income of about \$2,000.

The Judge’s Analysis

While Applicant's actions in providing support to his family and girlfriend were admirable, these were not circumstances beyond his control. He did not act responsibly in neglecting his own finances. He has not established that his financial problems are being resolved, are under control, or are unlikely to recur. His credit report does not reflect any balance is owed on the mortgaged property, which was sold at auction. The two HOA judgments were subject to a garnishment and may be resolved. His belated payments of \$2,000 on his state and Federal tax debts are insufficient to establish a good-faith effort to resolve those debts. He did not provide proof of filing his 2014 state and Federal income tax returns. Although he has begun to resolve his delinquent debts, he needs to do more to establish a track record of financial responsibility.

Discussion

In his appeal brief, Applicant essentially contends that the Judge erred in his findings and conclusions. First, he contends that he filed his 2014 tax returns, that he paid the credit card debt, and that his "bankruptcy is satisfied." Appeal brief at 1. Applicant does not identify, and we are unable to find, any evidence in the record that supports those claims. On the contrary, he testified that he was not sure about his 2014 tax filing and that the bankruptcy was dismissed for failing to make payments. Tr. at 38 and 35-36. The Judge's material findings about Applicant's failure to provide evidence showing favorable resolution of those matters are based on substantial evidence or constitute reasonable inferences or conclusion that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also contends the Judge erred in finding that Applicant's judgments were not satisfied. In his post-hearing submission, Applicant provided two court filings (both with the same case number) showing that "judgments" from a HOA have been satisfied. Applicant's Exhibit (AE) A. The case number reflected in that exhibit is close to, but does not match, those reflected in the credit reports for alleged judgments. Given the nature of the court filings in AE A, the Judge should have discussed those documents in making findings about the alleged judgments. Even if the Judge erred in failing to discuss those court filings, such an error was harmless because it likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). The Judge did note that Applicant likely resolved the alleged judgments though a garnishment. Additionally, if the alleged judgments are excluded from consideration, Applicant's other financial problems are sufficient to support the Judge's adverse security clearance determination.

Applicant further notes that he paid another debt; however, the Judge found in favor of him on that debt. He also requests that he be granted another hearing at which he intends to hire an attorney. Unless there is a showing that an error occurred that warrants a remand, an applicant is not entitled to receive a new hearing just so he or she may have another opportunity to present his or her case. *See, e.g.*, ISCR Case No. 14-03347 at 3 (App. Bd. May 27, 2016). In this case, Applicant has not established an error that warrants a remand.

Applicant’s appeal brief fails to establish the Judge committed any 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: James E. Moody
James E. Moody
Administrative Judge
Chairperson, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board