

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-00214.a1

DATE: 04/02/2018

DATE: April 2, 2018

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In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
_____	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 15, 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 December 29, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer Goldstein 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 served in the U.S. military during the 1980s, receiving an honorable discharge. Married with two children, Applicant has a master’s degree.

Applicant’s SOR alleged financial problems that he attributed to unemployment, a costly relocation, lending money to his daughter, stress caused by his mother’s illness, and unanticipated vehicle repairs. He has had financial problems in the past, which he addressed by discharging \$10,000 in debt through Chapter 7 bankruptcy in 1997.

The SOR includes a charged-off line of credit for over \$2,000; a judgment for about \$16,000, resulting from unpaid rent; a collection account for about \$250 for unreturned cable equipment; and failure to file Federal and state income tax returns and pay taxes when due. Applicant’s Federal tax delinquencies were for tax years 2008 through 2011. The IRS filed a substitute tax return for 2008. He subsequently filed the other returns and owes no money to the IRS for those years. Applicant claimed that he filed his delinquent state income tax returns for 2008 through 2011, but he did not provide corroborating evidence.

Applicant also filed late Federal returns for 2012 through 2016, and he owes back taxes for 2014 through 2016. He entered into a payment agreement with the IRS, and he also entered into an agreement with his state to resolve a state tax debt. Applicant has changed his withholding in order to avoid future tax debt. Applicant’s delinquent filings for 2012 through 2016 were not alleged in the SOR. The Judge stated that she was considering this non-alleged conduct on the issues on mitigation and the whole-person factors.

Applicant is a member of an academic honor society. He has completed a number of training courses pertaining to his job. He enjoys support by friends, neighbors, and co-workers, who characterize him as hard-working, trustworthy, and honest.

### **The Judge’s Analysis**

The Judge stated that Applicant's financial problems are long-standing, citing to his 1997 bankruptcy, his tax problems, and his other delinquent debts. She concluded that there is little evidence of responsible action in regard to his debts, nor is there evidence of financial counseling or other circumstances that would show that Applicant's problems are under control. Although Applicant has resolved the tax delinquencies that were alleged in the SOR, she cited to evidence of subsequent failures to file and pay taxes. Though Applicant has made arrangements to pay these tax debts, he has not shown any actual payments.

In the whole-person analysis, the Judge noted Applicant's military service and his character evidence. However, she concluded that he had not provided enough evidence of financial stability to permit a conclusion that his security-significant conduct is behind him.

## **Discussion**

Applicant argues that he has demonstrated resolution of his tax debts and that the remaining ones are relatively minor. He cites to evidence of circumstances outside his control that affected his financial situation, and he notes evidence of his installment plans to resolve his tax liabilities. He argues that the Judge did not give sufficient attention to the mitigating conditions, particularly 20(g): "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements."<sup>1</sup>

The Judge noted Applicant's unemployment and other such things that exerted an impact on his financial health. However, her conclusion that he had not shown responsible action in regard to his debts is sustainable. Her findings that he had previously experienced financial problems of such magnitude that he sought bankruptcy protection and that afterward he continued to acquire delinquent debt supports her overall conclusion that Applicant has not shown that his problems are behind him. Moreover, failure to file and pay taxes when due raises a concern that a person may be lacking in the reliability and judgment necessary for the protection of classified information. *See, e.g.*, ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017). Even if an applicant has made arrangements to file overdue tax returns and pay outstanding debts, a Judge may still consider the underlying circumstances for what they may reveal about the applicant's clearance eligibility, in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 16-02246 at 2 (App. Bd. Dec. 8, 2017). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, 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).

Applicant challenges the Judge's treatment of the non-alleged tax delinquencies, arguing that his clearance should not be denied based on such evidence. However, the Judge considered the additional tax problems only in her examination of Applicant's case for mitigation, which is permissible. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017). We give due consideration to the Hearing Office case that Applicant has cited. However, Hearing Office cases

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<sup>1</sup>Directive, Encl. 2, App. A ¶ 20(g).

are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 16-03219 at 2 (App. Bd. Nov. 15, 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: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board