

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant contends that the Judge did not consider such things as his resolution of his tax problems, the unique circumstances underlying his financial difficulties, and his motive for his bankruptcy actions, i.e., his effort to save his house from foreclosure. 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. We give due consideration to the Hearing Office case that Applicant has cited in his brief. However, Hearing Office Decision are not binding on other Hearing Office Judge's or on the Appeal Board. Each case must be decided on its own merits. Adverse decision affirmed.

CASENO: 17-00378.a1

DATE: 11/02/2018

DATE: November 2, 2018

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In Re:)	
-----)	ISCR Case No. 17-00378
)	
Applicant for Security Clearance)	
)	

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 March 29, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has worked for a Defense contractor since late 2015. He has held a security clearance since 2007. He is divorced and has one child.

Applicant’s SOR alleges numerous financial problems, such as belated tax filings, tax debts, a mortgage delinquency, several bankruptcy filings, etc. Applicant’s problems began in 2007, when his monthly mortgage payments went up several hundred dollars at a time when he was underemployed and later laid off from his job. Applicant’s mortgage debt resulted in a foreclosure sale of his house.

Regarding his tax delinquencies, Applicant did not file his Federal tax returns from 2012 through 2014, and he did not file his state tax returns for 2013 or 2014. By the close of the record, Applicant had filed his delinquent returns. He stated that the reason he did not file his returns is that he did not have an accountant. In addition, he owes about \$4,800 to the IRS, and he had a state tax lien for a little over \$1,000 that he paid off through automatic withdrawals from his paycheck. Applicant claimed that he was making payments on his Federal tax debt, but he did not provide corroborating evidence. He also filed for bankruptcy protection five times, although the petitions were dismissed. He stated that he filed for bankruptcy in order to protect his house from foreclosure.

The Judge’s Analysis

Though noting circumstances outside Applicant’s control that affected his financial problems, the Judge concluded that he had not demonstrated responsible action. He stated that Applicant did not provide documentary evidence in support of his claims of debt resolution. He also cited to the ages of Applicant’s debts and their amounts. He noted that Applicant had filed his delinquent income tax returns but that he did not provide a sufficient reason for his having failed to do so on time. He also stated that Applicant did not corroborate his claims to be paying off his tax debts.

Discussion

Applicant contends that the Judge did not consider such things as his resolution of his tax problems, the unique circumstances underlying his financial difficulties, and his motive for his bankruptcy actions, i.e., his effort to save his house from foreclosure. 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. 17-02145 at 3 (App. Bd. Sep. 10, 2018). We give due consideration to the Hearing Office case that Applicant has cited in his brief. However, Hearing Office Decision are not binding on other Hearing Office Judge’s or on the Appeal Board. Each case must be decided on its own merits. *Id.*

Applicant contends that the Judge should have extended favorable consideration to the mitigating condition set forth in Directive, Encl. 2, App. A ¶ 20(g),¹ insofar as he testified that he was paying his tax debt in accordance with an agreement. Tr. at 24. However, the Judge’s analysis centered on a lack of corroboration for this claim, which is consistent with the record. It is reasonable for a Judge to expect applicants to present documentation about the resolution of their debts. *See, e.g.*, ISCR Case No. 16-00164 at 3 (App. Bd. Apr. 6, 2018). Moreover, even if an applicant has established a payment plan with tax authorities, a Judge may still consider the underlying circumstances of the tax debt in evaluating the applicant’s judgment and reliability. *See, e.g.*, ISCR Case No. 17-01213 at 4 (App. Bd. Jun. 29, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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.”

¹ “[T]he individual has made arrangements with the appropriate tax authorities to file or pay the amount owed and is in compliance with those arrangements.”

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