



The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 27, 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 July 26, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues in his appeal: whether the Judge erred in her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the adverse decision.

### **The Judge’s Findings of Fact**

Applicant, who is 53 years old, has held a security clearance since 1999. He is single, graduated from college, and has an adult child. He has been employed as a Government contractor for about 22 years and has served in hostile areas overseas.

The SOR alleged that Applicant twice filed Chapter 13 bankruptcy petitions that were later dismissed; that he has a Federal tax lien for about \$101,000; that his home was foreclosed in 2016; and that he had other delinquent debts totaling about \$42,000. He admitted the majority of the allegations. He claims some medical bills were paid and disputes the tax lien and second bankruptcy.

Applicant attributes his financial problems to the failure of a consulting business that he started in 2006 and ended about four years later. In 2010, he decided to work overseas as a contractor with a salary of about \$275,000. He was terminated from that job in late 2012. He then found it difficult to find employment. He took low-paying jobs until he found steady employment in the spring of 2016.

Applicant filed Chapter 13 bankruptcy in 2014 and 2015. His first bankruptcy petition claimed liabilities of about \$436,000, while his second claimed about \$349,000. The first bankruptcy was dismissed when he missed a filing deadline. The second was dismissed due to his failure to make required payments. He only made those payments for seven or eight weeks.

A Federal tax lien was filed against Applicant in 2014. He did not file taxes while working abroad and had no income taxes withheld from his pay for 2010-2012. He disputes the amount owed, believing he owes about \$35,000 for 2010 due to exemptions for earnings abroad. However, he is not certain of the amount owed. In his post-hearing submission, he provided a 2018 client agreement with a tax relief service, but has not resolved this debt with the IRS.

Because Applicant’s bankruptcies were dismissed, he could not stop his house from going into foreclosure. He does not know if he owes a deficiency from the sale of the home. There is an outstanding home equity loan of about \$9,200. He has a charged-off credit card account for nearly

\$7,200 that was listed in the bankruptcy but remains unresolved. He has a past-due time share account for about \$2,100. He bought the time share in the early 2000s and was told it would be given back. He has done nothing to resolve the time share account.

Applicant has not paid three medical bills totaling about \$20,000 that arose when he was attacked in 2014. He had no insurance at the time and was in the hospital for about two months. He recently contacted the police to obtain a police report to show the attack occurred and those debts may be mitigated. The SOR also alleged seven parking tickets totaling about \$700. Applicant paid five of them for a total of about \$275 and a couple of days before the hearing paid another for \$275.

Applicant earns about \$98,000 annually and supports his child who is attending college. He has a savings account and retirement account, but does not know how much money is in either of them. He submitted a number of character letters from colleagues and friends who have known him for more than 20 years and who attest to his dedication and service in a combat zone. He provided several certificates and recommendations. A witness also testified to Applicant's dedication in a combat zone.

### **The Judge's Analysis**

Applicant's financial problems are the result of unemployment and underemployment after his termination of employment. He disputes the tax lien and just hired a service to investigate what he might owe. He paid a few parking tickets, but has not acted responsibly in addressing his debts. He admitted that he has not done anything regarding a majority of the debt. There is no clear indication that his financial problems are under control. He does not have an approved IRS payment plan and has not established a track record of payments. He has not presented sufficient evidence to mitigate the financial security concerns.

### **Discussion**

#### **1. Alleged Errors in the Findings of Fact**

Applicant's appeal brief has 26 paragraphs listing alleged errors in the findings of fact.<sup>1</sup> Some of the alleged errors involve matters that are not significant factors in the case. For example, he contends the Judge incorrectly found that he was 53 years old when, in fact, he is 52 and the Judge found he departed for an overseas job in 2010 instead of 2009. Such errors are harmless because they did not likely influence the outcome of the case. *See, e.g.*, ISCR Case No. 11-04176 at 3 (App. Bd. Dec. 18, 2012).

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<sup>1</sup> Applicant's assignments of error are somewhat confusing because he uses the term "Government" when he is apparently referring to the Judge and also uses that term at other times when he is referring to the Government as a party in the proceeding. To avoid confusion, this decision will use the term "Judge" when it is clear that is who Applicant is referencing in his appeal.

Many of the alleged errors involve Applicant's assertion that the Judge omitted, neglected to mention, or refused to address certain matters in her findings of fact. In this regard, we note that a Judge is not required to discuss every piece of evidence, which is a practical impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). Furthermore, Applicant's assertions that the Judge omitted certain facts are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *Id.* Nor are the alleged omissions sufficient to show the Judge's findings or conclusions were arbitrary or capricious.

In some of the alleged errors, Applicant has inaccurately characterized the Judge's findings. For example, he contends the Judge erred in finding his financial problems were due to his consulting business lasting only four years. He argues that finding "is pure conjecture and is categorically false." Appeal Brief at 3. He later states that his financial problems arose from being unjustly terminated from an overseas job. His argument, however, is unpersuasive because it focuses on a single sentence in the decision and fails to consider that sentence in its context. The Appeal Board does not review individual sentences in isolation, but rather considers the Judge's decision in its entirety to determine what findings the Judge made and what conclusions the Judge reached. *See, e.g.*, ISCR Case No. 16-03429 at 2 (App. Bd. Mar. 15, 2018). Here, the Judge made findings about the failure of Applicant's consulting business and the termination of his overseas employment in the same paragraph, which addressed the reasons for his financial problems. In her analysis, she also stated, "Applicant's debts are the result of unemployment and underemployment after termination of employment and contracts that did not materialize." Decision at 6. A full reading of the decision shows the Judge considered the job termination as a reason for Applicant's financial problems. As another example, Applicant also challenges the Judge's finding that he "disputed the second bankruptcy." He claims he was not disputing that the bankruptcy was filed, but was disputing the circumstances surrounding its dismissal. Decision at 2. The challenged finding does not address the bankruptcy's dismissal, but correctly indicated that Applicant disputed the second bankruptcy allegation when he answered the SOR.

Some of Applicant's challenged findings, which he claims are false, are supported by record evidence. For example, he contends the Judge erred in finding he earned about \$275,000 annually for the three years of his overseas employment. However, he testified as follows:

[Department Counsel]: While you were [overseas] before you were fired, you made -- over the course of three-and-a-half years, you made over \$1 million.

[Applicant]: I don't know if it was that much, but it's -- because the \$275,000 was average. I was there for three years. So, it wasn't a million. It was maybe three-quarters.<sup>2</sup>

Applicant also claims the Judge's erred in finding that he made payments towards his second bankruptcy for seven to eight weeks before defaulting. He contends that he made seven to eight

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<sup>2</sup> Tr. at 80-81.

payments over several months. In his testimony, however, he specifically stated that he made those payments for “seven to eight weeks.”<sup>3</sup>

Applicant does point out some errors in the Judge’s findings regarding the SOR allegations. For example, he challenges the Judge’s finding that he had no taxes withheld from his pay for the years he worked overseas, *i.e.*, 2010, 2011 and 2012. He contends his testimony clearly shows he was subject to tax withholding in 2011 and 2012. During his testimony, Applicant stated that his overseas employer “had [ ] us to be exempt from withholding, so they did not withhold any taxes for the 2010 tax year.” Tr. at 45. He further testified that he did not file his tax returns for 2010-2012 while working overseas. Tr. at 46. Based upon such testimony, it appears the Judge inferred that non-withholding practice continued for the entire period of Applicant’s overseas employment. However, Applicant later testified that, when he filed his tax returns for 2011 and 2012, “I was entitled to a return (sic), because I overpaid the taxes . . .” Tr. at 47-48. Additionally, regarding the charged-off debt for about \$9,200, Applicant contends the Judge erred in finding this was a deficiency on a home equity loan that resulted from the foreclosure of his house. He contends that this was a credit card debt. While Applicant’s testimony regarding the nature of this debt is less than clear, he did state more than once this was a credit card debt that has not been paid. Tr. at 49-50 and 98-100. Even though the Judge may have erred in her findings regarding Applicant’s tax withholdings for 2011 and 2012 and the nature of the \$9,200 debt, such errors were harmless because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-04176 at 3. In this regard, we note that Applicant has not shown the Judge erred in concluding that he had not resolved either the Federal tax lien or the \$9,200 debt.

Based on our review of the record, we conclude that the Judge’s material findings of security concern 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 has not cited to any harmful error in the Judge’s findings.

## 2. Alleged Errors in the Judge’s Analysis

Applicant contends the Judge improperly applied the findings of another case in his decision. He is referring to an Appeal Board decision that the Judge cited in her analysis (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)) for the proposition that the security concerns under Guideline F are broader than the possibility that a person might knowingly compromise classified information to raise money, but also encompass concerns about a person’s self-control, judgment, and other qualities essential for protecting classified information. From our review of the decision, there is no basis for concluding that the Judge somehow misapplied the cited case. She merely cited it for the above stated proposition.

Applicant also contends the Judge ignored record evidence in her analysis of the case. For example, he argues the Judge failed to address his claims that he was unjustly terminated from his overseas job and that he received faulty advice from an attorney that led to the dismissal of the

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<sup>3</sup> Tr. at 45.

second bankruptcy. None of his arguments, either when considered individually or in total, are sufficient to rebut the presumption that the Judge considered all of the record evidence or enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No 15-01717 at 4 (App. Bd. Jul. 3, 2017).

Additionally, Applicant argues that he does not pose a security risk and there is no evidence that he committed a security violation in his entire career. The Federal Government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snapp v. United States*, 444 U.S. 507, 511 n. 6 (1980). Security clearance decisions are not an exact science, but rather involve predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988). The Federal Government need not wait until an applicant mishandles or fails to safeguard classified information before it can deny or revoke access to classified information based on an applicant's conduct or circumstances that raise security concerns even in the absence of security violations. A history of financial difficulties raises security concerns. Directive, Encl. 2, App. A ¶¶ 18 and 19. *See also* ISCR Case No. 11-05365 at 3 and ISCR Case No. 96-0454 at 2 (App. Bd. Feb. 7, 1997) (discussing the negative security significance of a history of excessive indebtedness or recurring financial difficulties). In this case, Applicant's financial situation raises security concerns, and he had the burden of presenting evidence to demonstrate extenuation or mitigation sufficient to warrant a favorable security clearance decision. Directive ¶ E3.1.15. The Judge explained why the evidence Applicant provided was insufficient to overcome all the Government's security concerns. *See, e.g.*, ISCR Case No. 07-09966 at 3 (App. Bd. Jun. 25, 2008). Given the record evidence in this case, we find no reason to disturb the Judge's conclusion that Applicant had not met his burden of persuasion so as to warrant a favorable security clearance decision under the clearly consistent with the national interest standard. Directive, Encl. 2, App. A ¶¶ 2(a)-2(c). Applicant has not demonstrated any harmful error in the Judge's analysis.

### 3. Ineffective Assistance of Counsel

Applicant asserts that he was "hindered by ineffective assistance of counsel" at the hearing. Appeal Brief at 1 and 14. He claims his attorney failed to introduce certain evidence and perform other duties. The ineffective assistance of counsel doctrine is not applicable in DOHA proceedings. *See, e.g.*, ISCR Case No. 10-06703 at 2 (App. Bd. May 4, 2012).

### 4. Conclusion

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.'" *Egan*, at 528. *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