

KEYWORD: Guideline F

DIGEST: We do not find persuasive Applicant's contention that he mitigated the government's security concerns. Rather than address the \$500,000 in past-due taxes for tax years 2009-2013, Applicant introduced as evidence payment vouchers for estimated state tax payments he would be making in 2016 and 2017, as well as estimated Federal payment vouchers for tax year 2017. Adverse decision affirmed.

CASENO: 17-01291.a1

DATE: 08/17/2018

DATE: August 17, 2018

In Re:

Applicant for Security Clearance

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) ISCR Case No. 17-01291
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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 May 12, 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 May 4, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 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, we affirm.

The Judge’s Findings of Fact

Applicant, 58, is married and has four adult children. He retired from the military with over 20 years of service. He attributes his financial problems to a failed business and increased medical expenses associated with his wife and mother.

Applicant owed the Federal Government over \$500,000 in tax liens for past-due taxes. He admits to not timely filing tax returns and paying his income taxes over a four to five year period, 2009-2013. He claimed to have worked with the IRS to address and resolve his sizable Federal tax debt. Applicant testified he would provide all those documents showing debt resolution. Applicant submitted a post-hearing credit report showing the tax liens. No evidence was received supporting a repayment agreement he testified he entered into with the IRS. Additionally, Applicant did not report his failure to file his tax returns and pay his taxes on the security clearance application he submitted in 2014. (His failure to report these actions was considered only in assessing mitigation and conducting the whole-person review.)

In addition to the three tax lien allegations Applicant amassed a large amount of personal debt, the subject of the remaining four allegations. He admitted two of the allegations totaling over \$75,000. He claimed his mortgage payments were up-to-date but did not provide the documentation to corroborate his claim. The credit report he submitted reflects that from April to August 2016 he made no mortgage payments and from September to November 2016 he paid less than the amount owed. He stated at the hearing he would provide supporting documentation post-hearing to corroborate his claim but did not do so.

He also testified his medical debt was resolved by his medical insurance but provided no supporting documentation.

On the day before his security clearance hearing Applicant obtained credit counseling. His Federal tax returns showed he had an adjusted gross income for 2014, 2015, and 2016 to be \$190,000, \$140,000, and \$155,000 respectively. His reported monthly net disposable income is approximately \$2,800.

The Judge's Analysis

Applicant failed to meet his burden of proof and persuasion. The Judge noted some matters, the business failure and health issues, were largely beyond Applicant's control. However, Applicant did not act responsibly to address his delinquent debts despite having the apparent financial means to pay his debts. The record showed a long history of financial irresponsibility and his belated efforts to obtain financial counseling did not mitigate the security concerns raised by his financial situation.

The Judge weighed Applicant's 20 years of military service and long-time work as a Federal contractor along with other favorable evidence in the record concerning Applicant's fitness to hold a clearance. However, this favorable evidence was insufficient to mitigate the security concerns raised by Applicant's failure to pay his taxes and significant amount of delinquent debt. None of the mitigating conditions were found to fully apply.

Discussion

We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. We do not find persuasive Applicant's contention that he mitigated the government's security concerns. Rather than address the \$500,000 in past-due taxes for tax years 2009-2013, Applicant introduced as evidence payment vouchers for estimated state tax payments he would be making in 2016 and 2017, as well as estimated Federal payment vouchers for tax year 2017. These documents are unrelated to his alleged tax liens. The Administrative Judge asked more than once if Applicant could provide him documents to show what he still owed and what he had done to address his debts. Transcript at 43, 44. The Administrative Judge granted Applicant's request for a later hearing date and at the start of the hearing stated the record would remain open until March 30, 2018 (17 additional days). Applicant was given the opportunity to produce any documentation to show that he had acted to mitigate his debts and support his claims at the hearing. From our reading of the record, the Judge's material findings of a security concern are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant argues that the Judge did not consider or properly weigh all relevant evidence. He cites to such things as his character evidence, military service, and the actions he has taken to resolve his financial problems. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 14-03747 at 3 (App. Bd. Nov. 13, 2015). Applicant has not shown that he addressed his financial problems. The Judge found AG ¶19(f), failure to file and pay taxes in a timely fashion, applied raising a security concern of financial irresponsibility that Applicant lacked 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). The Judge considered the unaddressed consumer debt of over \$75,000 from 2015 and determined AG ¶¶19(b) and (e) applied, even though Applicant had made a “belated” effort to obtain financial counseling. Decision at 6. A Judge may 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). We give due consideration to the Hearing Office case that Applicant has cited. However, Hearing Office cases 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). Additionally, the Judge complied with the requirements of the Directive in his whole-person analysis by considering the totality of the evidence in reaching his decision.

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: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board