

KEYWORD: Guideline F

DIGEST: Given the facts in this case, the Judge’s conclusion that Applicant knew there was stock trading activity taking place on his son’s account and such activity could have tax consequences was a reasonable inference that could be drawn from the evidence. Applicant has failed to show the Judge erred in either her findings or conclusions regarding the tax lien. Adverse decision affirmed.

CASENO: 17-01337.a1

DATE: 06/13/2018

DATE: June 13, 2018

In Re:	)	
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	)	
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 May 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 March 14, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 discussion, we affirm the Judge’s decision.

### **The Judge’s Findings of Fact**

Applicant is a 60-year-old employee of a defense contractor. The SOR alleged four delinquent debts. The Judge found in favor of Applicant on three of those allegations and against him on the allegation that he was indebted on a Federal tax lien for about \$355,000. Regarding the tax lien, the Judge found,

When Applicant answered the SOR, he contested the alleged \$355,000 tax lien on the basis that the tax lien filed against him in 2009 had been released. At his hearing, Applicant challenged the IRS Notice of Federal Tax lien . . . because the taxpayer identification number did not match his social security number, although the lien bore his name and current address. (Tr. 20.) Applicant subsequently testified that the tax lien may relate to a family member. (Tr. 33-35.) When pressed on the issue, Applicant admitted that when his 23-year-old son was a minor (around age eight), he had an investment account, and that the tax identification number associated with the . . . tax lien was his son’s social security number. (Tr. 35.) Applicant then blamed his financial advisor, who had generated significant gross proceeds on the account from short-term trading allegedly without Applicant’s consent. Applicant acknowledged, however, that he had not expressed any concerns to his financial advisor because, at least initially, he believed that the financial advisor was [...] making all of those trades on his son’s behalf, but he also admitted that he “lost track of the account for a while.” (Tr. 35-36, 38.) Applicant admitted that he was responsible for the tax issues on his then minor son’s account, and that he had not filed tax returns for his son for the tax years 2003, 2004, or 2005. It was a matter of getting the documents together. (Tr. 36, 38.) Applicant expressed his belief that the tax lien could be cleared up with the IRS and that he owed no taxes because of the net losses on the stock trades. (Tr. 36, 49.) Applicant denied receiving any notice from the IRS about the tax lien. He claimed not to have known about the tax lien before his OPM interview in January 2017. As of December 2017,

he had made no payments to the IRS because he disputes the assessed tax liabilities. (Tr. 47, 53-54.)<sup>1</sup>

In a post-hearing submission, Applicant presented his son's undated and unsigned Federal income tax returns for 2002, 2003, and 2004. Those tax returns reflected a total tax liability of about \$300. At the close of the record, the alleged tax lien had not been released.

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

The recently completed tax returns, which were not shown to have been filed, may reduce the tax liability and release the tax lien. However, this security clearance decision must be based on the evidence, which includes an outstanding tax lien for which Applicant is primarily responsible because his minor son could not have authorized the trades. He knew there was significant stock trading on his son's account that could have tax reporting consequences. His losing track of the account for a while does not constitute a condition beyond his control. As of the close of the record, the tax lien was unresolved. It was premature to conclude the tax returns will mitigate the financial concerns arising from the tax lien.

In her whole-person analysis, the Judge stated,

Applicant exercised poor judgment in handling his responsibilities with regard to reporting the gains and losses on his then minor son's investment account to the IRS for multiple years. Applicant was less than fully forthcoming about the tax lien at his security clearance hearing. He initially expressed doubts about the tax lien, which was addressed to him at his current address, because the taxpayer identification number did not belong to him. He claimed he was "trying to get it cleared up and figure out what [the lien] is all about." When asked whether he knew anything about the lien or the circumstances that led to the lien, he responded that he needed more information. He later admitted that one of the agents thought it pertained to a member of his family and that it could be associated with an investment account of the older of his two sons. When asked who handled the investments for his then underage son, Applicant responded, "It changed brokerages a couple of times." As to who would have been the responsible party to deal with the IRS, Applicant answered, "If he was a minor, I guess that would have fallen on me." Applicant had a good idea that the lien was generated because of the gross proceeds in stock trades on his son's investment account. He knew he had not filed tax returns for those three years for his son.<sup>2</sup>

Applicant failed to exercise the good judgment that must be expected of persons with security clearance eligibility by not fulfilling his tax obligations with

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<sup>1</sup> Decision at 4.

<sup>2</sup> Decision at 9.

regard to reporting the investment activity and not paying the taxes owed in a timely fashion. By initially withholding significant facts known to him about the tax matter during his hearing testimony, he raised doubts about whether he can be counted on to act without regard to his self-interest. After considering all the facts and circumstances, I conclude that it is not clearly consistent with the national interest to continue Applicant's security clearance eligibility.<sup>3</sup>

## Discussion

In his appeal brief, Applicant states that his son's tax returns for the years in question were filed after the hearing, provides a copy of a canceled check payable to the U.S. Treasury, and indicates that he expects the tax lien to be resolved shortly. These statements and the cancelled check constitute new evidence that the Appeal board cannot consider. Similarly, while the case was before the Board, Applicant submitted more new evidence regarding IRS actions to eliminate Applicant's debt for 2004 and all but \$879 of his debt for 2003. The Board cannot consider those documents either. Directive ¶ E3.1.29.

Applicant challenges that Judge's conclusion that "Applicant knew there had been significant stock-trading activity on his son's account and that it had tax reporting implications." Appeal Brief at 1. He contends that he did not know of that stock trading activity at the time, only learned of it recently while investigating the tax lien, and, upon learning about it, proceeded to gather documents and complete the tax returns. As reflected in the above-quoted findings, the Judge referenced specific pages of the transcript that supported her findings regarding Applicant's handling of the tax lien. Based on our review of the record, the Judge's material findings regarding the tax lien are based on substantial evidence. *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).<sup>4</sup> We note the Judge did not find that Applicant did not know of specific stock trades involving his son's investment account. Given the facts in this case, however, the Judge's conclusion that Applicant knew there was stock trading activity taking place on his son's account and such activity could have tax consequences was a reasonable inference that could be drawn from the evidence. Applicant has failed to show the Judge erred in either her findings or conclusions regarding the tax lien.<sup>5</sup>

Applicant also contends that the Judge mis-weighed the evidence. In this regard, he cites to his resolution of three of the alleged debts and his dealings with the IRS, which he states can be difficult and time consuming. He also noted that, because the lien was not listed under his social

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<sup>3</sup> *Id.*

<sup>4</sup> Substantial evidence is "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.

<sup>5</sup> Even if the Judge had concluded that Applicant did not know of the trading on his minor child's account, such a conclusion would not get Applicant very far in this context. A parent has an obligation to be aware of and make decisions for a child's account of that nature. Applicant's alleged failure to fulfill that obligation would have been inconsistent with the conduct and character required for a security clearance.

security number, the IRS would not discuss the matter with him. He argues the record shows he has taken good-faith efforts to resolve his financial problems. It is well established that the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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