

KEYWORD: Guideline F

DIGEST: Even if an applicant has resolved some or all of his or her financial problems, a Judge may still consider the circumstances underlying those problems for what they may reveal about the applicant's worthiness for a clearance. Adverse decision affirmed.

CASENO: 17-02161.a1

DATE: 05/17/2018

DATE: May 17, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-02161
)	
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 July 1, 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 February 9, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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.

Background

The SOR contains six allegations, including that Applicant failed to file certain Federal and state tax returns in a timely manner and that he had delinquent Federal tax debts of about \$4,000 for 2013 and about \$3,000 for 2014. The Judge found in favor of Applicant on two non-tax-related debts and against him on the tax-related allegations. The Judge concluded that Applicant did not offer a valid excuse for not filing his Federal and state tax returns as required and that he did not act responsibly regarding his Federal and state income tax debts.

Discussion

Applicant contends the Judge erred in analyzing the whole-person concept by concluding he did not mitigate the alleged security concerns. He argues he mitigated those concerns by “showing a positive effort” in getting his finances in order. Appeal Brief at 1. In support of his arguments, he highlights, among other matters, that he filed all of his tax returns by the time of the hearing and that he encountered a financial hardship due to a pay cut. His arguments are not sufficient to show the Judge committed any harmful error. We first note that, even if an applicant has resolved some or all of his or her financial problems, a Judge may still consider the circumstances underlying those problems for what they may reveal about the applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015). Second, 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 is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

In the Appeal Brief, Applicant also states that a security clearance denial will have a negative impact on him. However, the adverse impact that an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating his or her security eligibility. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017). “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 ¶ 2.3 and 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