

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. Adverse decision affirmed.

CASENO: 17-03053.a1

DATE: 08/06/2018

DATE: August 6, 2018

In Re:

Applicant for Security Clearance

ISCR Case No. 17-03053

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 September 28, 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 April 12, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 in his appeal: 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 owns a small company and did not pay all of his business and personal taxes for 2002, 2003, 2005 through 2012, and 2014. The IRS filed five Federal tax liens against his business between 2012 and 2015 totaling about \$142,000 and filed five Federal tax liens against him personally between 2010 and 2013 totaling about \$360,000. Applicant attributed his tax deficiencies to “a bad period of time in [his] life going through a divorce, and really didn’t care about a lot of things and two of them were [his] personal and business taxes.” Decision at 3. He realized he needed to get his life in order and set up an installment agreement with the IRS in 2013. He completed paying the business taxes in 2016, and the liens against his company were released.

In 2016, Applicant entered into an installment agreement with the IRS to pay his personal taxes. Under that agreement, he was to pay about \$3,300 per month on an amount that rose to over \$401,000 with interest and penalties. “[He] made most of the payments on a timely basis.” Decision at 3. Under a new agreement, he is to pay \$4,220 per month on a balance of about \$354,000 at the beginning of 2018. He planned to take out loans to pay his taxes. He submitted a number of letters attesting to his character and dependability.

The Judge’s Analysis

Applicant is credited with starting to resolve his tax problems in 2013. He resolved his business tax problems first and has been paying on his personal tax problems since 2016. He has resolved two personal tax liens totaling over \$100,000, which are mitigated. Those payments are impressive, but he still owes more than \$350,000.

Applicant’s tax problems raise security concerns about his willingness to comply with well-established government rules. His financial problems are recent, ongoing, and cast doubt on his

current reliability, trustworthiness, and good judgment. Mitigating conditions 20(d)¹ and 20(g)² are partially applicable, but are not sufficient to mitigate the alleged security concerns.

Discussion

In his appeal brief, Applicant contends that the Judge erred in concluding that the alleged security concerns were not mitigated. He cites to his payment plans, his resolution of the business tax debts, and his consistent payments under the current personal tax payment plan. He argues that he has made consistent payments over the past five years and notes the Judge referred to his efforts as impressive. However, 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).

Applicant's appeal brief fails to establish the Judge committed any harmful error. 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."

¹ Directive, Encl. 2, App. A ¶ 20(d) states, "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

² Directive, Encl. 2, App. A ¶ 20(g) states, "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements."

Order

The Decision **AFFIRMED**.

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, 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