

KEYWORD: Guideline F

DIGEST: Applicant argues that he was addressing his tax problems in a reasonable manner. He argues specifically that the record does not support the Judge’s conclusion that it was the issuance of the SOR that prompted him to resolve his tax problem. Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-04353.a1

DATE: 09/19/2018

DATE: September 19, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-04353
)	
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 January 17, 2018, 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 decision on the written record. On July 10, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip J. Katauskas 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.

The Judge’s Findings of Fact and Analysis

Applicant experienced financial problems due to tenants’ failure to pay rent and to a lengthy period of underemployment. He filed for Chapter 7 bankruptcy protection and was discharged in 2012. Applicant has a Federal tax lien, which he claimed that he would resolve through refinancing his house. He also stated that he had contacted the IRS about a payment plan but did not follow through because he thought that the refinancing would resolve his tax problem. In May 2018, in response to the File of Relevant Material (FORM), Applicant presented evidence of a payment plan of \$2,000 a month, along with a single payment in furtherance of the plan. Applicant’s evidence stated that he owed \$168,004 to the IRS.

The Judge concluded that the circumstances surrounding Applicant’s bankruptcy were mitigated (although, his formal finding on that allegation was against Applicant). However, he reached the opposite conclusion concerning the tax debt. He noted that Applicant regained full time employment in 2015 yet did not begin to address his tax lien until after he had received the SOR. The Judge concluded that the “inference is unmistakable that the issuance of the SOR and the filing of the FORM prompted Applicant to address his delinquent federal income tax debts.” Decision at 5. The Judge also concluded that Applicant had not demonstrated a meaningful track record of debt payment.

Discussion

Applicant’s appeal brief includes new evidence, which we cannot consider. Directive ¶ E3.1.29. Applicant cites to evidence of his efforts to address his tax problems. For example, in his security clearance application (SCA), Applicant stated that he was working to resolve a tax debt to his state. Item 3, SCA, at 35-36. He argues that he was addressing his tax problems in a reasonable manner. He argues specifically that the record does not support the Judge’s conclusion that it was the issuance of the SOR that prompted him to resolve his tax problem. Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or 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. 17-02391 at 4 (App. Bd. Aug. 7, 2018). The Judge’s conclusion that Applicant had not presented sufficient evidence to mitigate the concerns arising from his substantial tax debt is sustainable.

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board