

KEYWORD: Guideline F

DIGEST: Applicant challenges the Judge’s finding that “Applicant’s personal financial statement shows a monthly net remainder of \$2,116, but it does not reflect any payments to the state or Federal tax authorities.” Applicant notes that he no longer has any past-due state taxes. Even though the Judge may have erred in addressing state tax authorities in the challenged finding, we find that error is harmless because it did not likely affect the outcome of the case. Adverse decision affirmed.

CASENO: 17-03784.a1

DATE: 08/22/2018

DATE: August 22, 2018

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In Re:)	
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-----)	ISCR Case No. 17-03784
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Applicant for Security Clearance)	
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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 November 14, 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 decision on the written record. On June 4, 2018, after considering the record, Defense Office of Hearings and Appeal (DOHA) Administrative Judge Gregg A. Cervi 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 Finding of Fact

Applicant, 46, has been working for a defense contractor since 2004. He served in the military for four years, is married, and has a child. The SOR alleged that Applicant had eight delinquent debts and filed Chapter 7 bankruptcy in 2001, which was later dismissed. Seven of the debts are for past-due taxes. In his 2016 security clearance application, he disclosed he owed the IRS about \$42,000 for 2009-2014 and noted his wife was receiving worker’s compensation and his finances were tight. His Answer to the SOR reflected he had purchased a house a year and a half earlier, and he had an IRS installment agreement in which he was making monthly payments of \$600. His Response to Department Counsel’s File of Relevant Material (FORM) reflected that he paid his state tax debts and paid the IRS over \$10,000 for 2009-2010 between December 2017 and January 2018. As of February 2018, he still owed the IRS about \$38,000 for 2011, 2013, and 2014. He did not provide copies of the IRS installment agreement or its payment history. His Federal tax transcripts for 2005 and 2006 reflected that he had a tax lien filed against him for those years in 2008, entered into an installment agreement for the past-due taxes in 2016, but the IRS “wrote off” nearly \$14,000 of that debt in August 2017 and cancelled the installment agreement. Decision at 3. His employer noted that he set up a wage garnishment in 2016 to repay over \$9,000 in delinquent state taxes. His credit report for 2016 and 2017 reflected Federal and state tax liens; however, his 2018 credit report does not list any tax liens. He has a net monthly remainder of about \$2,100 and savings and investments of about \$186,000.

The Judge’s Analysis

Applicant has paid some of his delinquent debts but well after they were due and after the SOR was issued. He failed to pay his past-due debts even though he has sizable savings and investments and not long ago purchased a home. He has a history of not handling his taxes in a responsible manner.

Discussion

Applicant’s brief includes matters that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant challenges the Judge's finding that "Applicant's personal financial statement shows a monthly net remainder of \$2,116, but it does not reflect any payments to the state or Federal tax authorities." Decision at 3. Applicant notes that he no longer has any past-due state taxes. Even though the Judge may have erred in addressing state tax authorities in the challenged finding, we find that error is harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 16-01329 at 3 (App. Bd. Apr. 11, 2018).

In his appeal brief, Applicant explains the reason why he filed bankruptcy, discusses his efforts to resolve his Federal tax issues, and states he has no tax liens on his credit report. His arguments amount to a disagreement with the Judge's weighing of the evidence and are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06634 at 2 (App. Bd. Apr. 28, 2016). Applicant also notes that his job requires him to have a security clearance. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

Applicant has not identified any harmful error in the Judge's 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