

KEYWORD: Guideline F

DIGEST: Applicant’s arguments are not sufficient to show that the Judge’s evaluation of his credibility, and hence his claims of mitigation are unreasonable. Adverse decision affirmed.

CASENO: 14-02962.a1

DATE: 04/02/2015

DATE: April 2, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-02962
)	
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 August 8, 2014, 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 January 15, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge James F. Duffy 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

Applicant is an employee of a Defense contractor for whom he has worked since March 2014. He has never previously held a clearance. In the mid-2000s, Applicant became owner of a business that had three employees. In 2008, due to the economic downturn, his business slowed, and, three years later, it closed. He has experienced unemployment off and on between 2011 and the start of his current job; moreover, he and his wife divorced in 2011.

Applicant's SOR alleged several delinquent debts, including Federal tax obligations. The Judge found that many of these debts were resolved. He also found that some of the tax allegations were merely repeats of others in the SOR. However, one allegation addressed a Federal tax lien filed in 2011 for the amount of \$26,672. Applicant made inconsistent statements about this debt. In his security clearance application he stated that he had hired a tax lawyer and that the debt had been resolved. In his clearance interview, he stated that his tax liens had been resolved and that the IRS had forgiven a large portion of his debt. Applicant submitted an Installment Agreement Request for tax years 2008 through 2012, offering to pay \$200 a month until his debt was extinguished. He provided no evidence that the IRS had accepted this offer.

Applicant's annual income is between \$60,000 and \$70,000, depending on the amount of overtime he works. He stated that he has no other delinquent debts. He enjoys a good reputation for his work ethic and his dedication.

The Judge's Analysis

The Judge resolved all but one of the SOR allegations in Applicant's favor. For the remaining one, the tax lien, he noted that Applicant had experienced unemployment, a divorce, and the harmful effects of the recession, which were beyond his control. He found, however, that this tax problem was due to Applicant's having failed to allocate a sufficient portion of his income to paying his tax. He noted that there is no evidence that the IRS has accepted Applicant's offer of settlement. In the whole-person analysis, he cited to Applicant's favorable evidence. However, he stated that Applicant's inconsistent statements about his tax debt were "troubling" and that his explanations for these statements were not convincing. Decision at 8.

Discussion

Applicant has provided some further explanation for his inconsistent statements. However, Applicant's Appeal Brief is not sufficient to show that the Judge's evaluation of his credibility was unreasonable. *See* ISCR Case No. 11-11959 at 4 (App. Bd. Oct. 15, 2013) (The Appeal Board gives deference to a Judge's credibility determination unless it is unreasonable or contradicted by other

evidence.) Applicant's brief refers to matters from outside the record, including documents that post-date the Decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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