

KEYWORD: Guideline F

DIGEST: Although Applicant’s poor financial condition was affected by circumstances outside his control, the Judge reasonably concluded that Applicant had failed adequately to address his debts. The Judge’s findings are based on substantial evidence. Any error in those findings is harmless. Adverse decision affirmed.

CASENO: 09-04380.a1

DATE: 02/18/2010

DATE: February 18, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-04380
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 5, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 23, 2009, after the hearing, Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings were based upon substantial record evidence and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge found that Applicant had a significant amount of delinquent debt related to federal and state tax liens, repossession of a truck, child support, and a credit card. Applicant had paid off the child support by the time of the hearing. The federal tax liens arose due to Applicant's neglect in filing tax returns for years in the late 1990s and early 2000s. Applicant's family lived in a state affected by a major hurricane. Applicant incurred expenses on behalf of his family in the aftermath of the storm.

In the Analysis portion of the decision, the Judge noted the affect that the storm had on Applicant's financial condition. However, he also noted that Applicant's significant tax debt problems arose prior to that. "Even though Applicant has known for more than a year of the government's concern [expressed in the SOR] about his unpaid taxes and other delinquent debts, except for his child support obligation, he has yet to pay any of [his] past due debts. He owes more than \$170,000 in past due taxes, a debt which continues to accumulate interest. Applicant has done too little to pay his past due obligations." Decision at 11.

Applicant challenges certain of the Judge's findings of fact, principally the amount of his tax debts. After examining the record, we conclude that the Judge's material findings of security concern are based upon substantial record evidence. See Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.") See also ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). The differences in amounts alleged by Applicant do not change the security significance of the tax debts, under the facts of this case. Therefore, even if the Judge erred, the error is harmless. See ISCR Case No. 01-23362 at 2 (App. Bd. Jun. 5, 2006); ISCR Case No. 03-09915 at 4 (App. Bd. Dec. 16, 2004); and ISCR Case No. 01-11192 at 5 (App. Bd. Aug. 26, 2002).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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).

¹The Judge's favorable findings under Guideline E are not at issue in this appeal.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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