

KEYWORD: Guideline F

DIGEST: The Judge relied on Applicant's tax debts inconsistent statements to reach adverse conclusions. Adverse decision affirmed.

CASENO: 11-07447.a1

DATE: 04/11/2013

DATE: April 11, 2013

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In Re: )  
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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**

Paula W. Phinney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 10, 2012, 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 28, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 failed to consider all of the record evidence and 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 divorced. He has had medical problems, which resulted in unemployment.

Applicant failed to file his federal income taxes on time for a number of years, and he failed to deduct enough taxes from his wages, with the result that a tax lien was issued against him. He also had a tax lien filed by his state.<sup>1</sup>

Regarding his federal taxes, Applicant made inconsistent statements. He told a clearance interviewer that he first learned of his debt to the IRS in 2007 or 2008 and that he had been making payments since then. At the hearing, he testified that he first became aware of his tax liabilities in 2010 and began making payments the next year. He did not explain these inconsistencies. Applicant entered into a repayment agreement with the IRS in 2012 and has been making monthly payments in accordance with it. However, he did not provide evidence of timely filing and payment for tax years 2010 and 2011.

Later in 2012, he entered into a repayment agreement with his home state. At the hearing, he testified that he had been making payments to the state prior to entering into the agreement, but he did not corroborate this claim.

Applicant attributed his tax problems to his former spouse having claimed their children on her tax return every year instead of every other year, as required by their agreement. Applicant’s divorce decree is silent on this matter.

Applicant has taken several financial counseling courses and has hired a credit counseling service. He has held a security clearance since 1997 without incident or concern. He enjoys a good reputation for the quality of his work, as well as for his trustworthiness and reliability.

### **The Judge’s Analysis**

The Judge concluded that Applicant’s financial circumstances raised security concerns under Guideline F. He cleared Applicant of all the allegations except the two pertaining to his federal and

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<sup>1</sup>The Judge’s favorable findings regarding other debts are not at issue in this appeal.

state taxes. The Judge concluded that Applicant's divorce and other difficulties were not reasonable excuses for his having failed to file his tax returns.<sup>2</sup> Moreover, he stated that Applicant had been aware of his tax debts for years before he undertook corrective action, and the debts were ongoing as of the close of the record.<sup>3</sup> The Judge stated that Applicant submitted no evidence of voluntary repayment prior to his current repayment agreement. Given that Applicant's repayment plans were established after tax authorities had secured liens against him and garnished his wages, the Judge concluded that Applicant had not demonstrated a good-faith effort to pay off his debts. Neither did he demonstrate that his financial problems were otherwise being resolved.<sup>4</sup>

In the whole-person analysis, the Judge noted Applicant's favorable evidence regarding the circumstances of his debts, his good security record, and his good work performance. However, he stated that Applicant's failure to meet his duty as a citizen to file and pay taxes raises reasonable concerns that he may fail to protect national security. The Judge concluded that the evidence was such that he had to resolve the case in favor of national security and against Applicant.

## **Discussion**

Applicant contends that the Judge erred insofar as he failed to consider all of Applicant's evidence. He contends that the Judge ignored evidence that Applicant was in the process of paying off his debts. He cites to his character references and also contends that the Judge erred in stating that Applicant had submitted no evidence of voluntary repayment to federal and state tax authorities prior to entering into his agreements. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-03370 at 3-4 (App. Bd. Sep. 7, 2011). The Judge did make findings about the evidence Applicant has cited, and he discussed the evidence in the Analysis. We interpret the statement that Applicant had submitted no evidence of voluntary repayment to refer to a lack of corroborating evidence. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he provided a reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

Applicant has cited to some Hearing Office cases which, he contends, support his effort to obtain a security clearance. We have given these cases due consideration as persuasive authority. However, as Applicant himself notes, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-04176 at 3 (App. Bd. Dec. 18, 2012). The cases that Applicant cites contain significant factual differences from his own.

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<sup>2</sup>*See* Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

<sup>3</sup>*See* Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago . . . that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

<sup>4</sup>*See* Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[;]" Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

Moreover, one of the favorable decisions described in his brief was reversed on appeal. These cases are not sufficient to demonstrate that the Judge's decision was erroneous.

The Decision rested in large measure on the Judge's findings and the underlying record evidence of Applicant's extensive tax debts, the relative recency of his efforts to pay the debts off, and his inconsistent statements concerning when he learned of his debts and when he began his repayment efforts. The record supports a conclusion 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). 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 Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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