

KEYWORD: Guideline F

DIGEST: The Judge had serious doubts about Applicant’s reliability and judgment, due to his having failed to discharge his legitimate tax obligations in two state and to the Federal Government. Adverse decision affirmed.

CASE NO: 11-09365.a1

DATE: 05/06/2013

DATE: May 6, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-09365
)	
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 September 25, 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 February 19, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O’Brien 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 evidence favorable to Applicant and whether the adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has worked for a Defense contractor since 2005. He has worked either as a contractor or as a Federal Government employee for 26 years. He has a bachelor's degree and is working on an advanced degree. He has held security clearances since the mid-1980s.

Applicant has experienced financial problems, which he attributed to his failure to have approached his tax obligations with the appropriate degree of responsibility. He did not file tax returns for two states and for the Federal Government for several years. His Federal back taxes are now paid, but he has not yet paid off all his delinquent state tax obligations. He admitted that these failures reflected poorly upon his judgement. He also had problems meeting his mortgage payments. His lender has approved a short-sale of the house. Applicant's SOR alleges other debts, including ones for student loans. Applicant's wife had to retire from her job, resulting in a loss of income for the family. Applicant's financial statement shows a negative monthly remainder. Applicant has not received financial counseling.

The Judge's Analysis

The Judge concluded that Applicant's financial problems raised security concerns under Guideline F. She also concluded that Applicant had mitigated several of those concerns. However, she concluded that he had not done so with regard to his state and federal taxes. Though acknowledging that his tax debts had either been paid or were covered by a payment plan, she stated that Applicant's ability to maintain those plans was not clear. Moreover, she noted that he did not enter into payments plans for the tax debts until tax authorities had located him in another state and that he did not begin to pay off a 1995 Federal tax lien until 2002. She stated that she had serious doubts about Applicant's reliability and good judgment, due to his having failed to discharge his legitimate tax obligations to two different states and to the Federal Government.

Discussion

Applicant asserts that he is resolving his tax problems in accordance with guidance he has received from state and Federal taxing authorities. He states that he does not owe taxes to the states and that the sale of his home will provide him with funds that can be used for debt repayment. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 18, 2012). In the case currently under consideration, the Judge made detailed findings about Applicant's circumstances, including the short-sale of his home. Her adverse decision was based upon Applicant's tax problems, which, she stated, arose due to a deliberate decision to avoid filing returns. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither does his argument provide a reason to believe that the Judge mis-weighed the evidence.

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: Michal 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