

KEYWORD: Guideline F

DIGEST: Although the Judge credited Applicant with making some effort with regard to repayment of her delinquent debts, the Judge concluded that these efforts were of recent vintage and that Applicant possessed the financial means to satisfy the debts in a more timely manner. These conclusions are reasonably supported by the record evidence. Adverse decision affirmed.

CASENO: 11-13507.a1

DATE: 10/29/2013

DATE: October 29, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-13507
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Casey, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 27, 2013, 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). On March 28, 2013, DoD amended the SOR to add two additional Guideline F allegations. Department Counsel requested a hearing. On August 7, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Joan Caton Anthony 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following pertinent findings of fact: Applicant works as an independent contractor for a Government contractor. In the mid-1990s, Applicant and her former husband filed for Chapter 7 bankruptcy protection. In 2009, Applicant worked as a term employee for the Federal Government. She submitted a security clearance application, but the Government did not award her a clearance. During the course of her investigation, it was discovered that she had numerous delinquent debts that she was unable to pay and that she had a delinquent debt to the IRS. Applicant has a state tax lien for \$5,582, filed in August 2011. She failed to file her state and Federal tax returns for the years 2007 through 2009. She filed her Federal tax returns in early 2012 and her state returns at the end of that year. She believes that she does not owe the total amount of the lien and that once her refunds are processed she will owe \$4,354. She has entered into an installment contract for the payment of her state tax debts, though she stated an intent to pay the debt in full before the end of the installment period. Applicant claims not to live beyond her means and that she would be hired as an employee of the Federal contractor if she gets a clearance. She has a net remainder of \$2,405 after she pays her expenses and has no assets. After the hearing, Applicant presented evidence that she had consulted an accountant who advised her of the amount of money she would need to set aside in order to resolve her debts. Applicant enjoys an excellent reputation for integrity. Fellow workers praise her professional skills, character, and trustworthiness.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under Guideline F. She resolved in Applicant's favor one allegation pertaining to a debt to a Government agency. In analyzing Applicant's case for mitigation regarding Applicant's tax problems, the Judge stated that Applicant's efforts to resolve them are relatively recent and that Applicant had not demonstrated that the problems were unlikely to recur. Though noting circumstances beyond Applicant's control, the Judge stated that Applicant had failed to demonstrate responsible action in regard to her tax debt. Although Applicant consulted an accountant after the hearing, the Judge concluded that this evidence was not sufficient to demonstrate that Applicant's problems are being resolved. In the whole-person analysis, the Judge stated that Applicant has a history of financial problems and that, while Applicant has addressed some of her debts in the past, she has not been able to prevent new delinquencies. The Judge stated that it is not clear that Applicant will be able to maintain financial stability.

Discussion

Applicant states that failure to file tax returns is not the same as tax evasion. However, failure to file returns is explicitly mentioned in the Directive as a disqualifying condition. *See* Directive, Enclosure 2 ¶ 19(g). *See also* ISCR Case No. 11-06622 at 3 (App. Bd. Jul. 2, 2012). In challenging the Judge’s application of the mitigating conditions, Applicant argues, *inter alia*, that her debts are not recent. However, unpaid delinquent debts constitute a continuing course of conduct, thereby undermining a conclusion that the debts are not recent within the meaning of the Directive. *See, e.g.*, ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010). Although the Judge credited Applicant with making some effort with regard to repayment of her delinquent debts, the Judge concluded that these efforts were of recent vintage and that Applicant possessed the financial means to satisfy the debts in a more timely manner. The Judge also concluded that the Guideline F mitigating conditions only partly applied and that this partial application was not enough to overcome the security concerns arising out of her ongoing history of financial indebtedness. These conclusions regarding mitigation are reasonably supported by the record evidence. A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Examining the Decision in light of the record as a whole, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. Given evidence that, after having filed for bankruptcy, Applicant acquired additional delinquent debts, to include a tax lien, and that she failed to file state and federal returns, the decision is sustainable. “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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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