

KEYWORD: Guideline E; Guideline F

DIGEST: The Judge did not err in concluding that Applicant’s ongoing tax debts raise concerns that he may be lacking in qualities expected of those with access to classified information. Indeed, the Directive presumes that there is a nexus between admitted or proved conduct under any of the Guidelines and an applicant’s eligibility for a clearance. Substantial tax obligations that have remained unresolved over several years, despite an apparent ability to have addressed them, are sufficient to uphold the Judge’s conclusion under Disqualifying Condition 19(f). Adverse decision affirmed.

CASENO: 17-03205.a1

DATE: 04/02/2019

DATE: April 2, 2019

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In Re:)	
-----)	ISCR Case No. 17-03025
)	
Applicant for Security Clearance)	
)	

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Andrew J. Sherman, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 21, 2017, DoD 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. Subsequently, Department Counsel withdrew the Guideline E allegations. On January 2, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 erred by concluding that his circumstances raised security concerns 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

The Judge made the following findings that are pertinent to the issues raised on appeal: Applicant was chief executive officer and primary owner of a Subchapter S corporation, which passes income, losses, deductions and credits on to shareholders. In 2011, he sold a division of this company, resulting in an adjusted gross income to him of nearly \$6,000,000 and a tax liability of over \$1,000,000. Although Applicant made some payments toward his tax debt, including a payment of \$200,000, as of the close of the record he owed the IRS over \$700,000 for tax year 2011. He also owed the IRS over \$60,000 for 2012. Applicant testified that he relied on the advice of an accountant to address the tax liability resulting from the sale of the division. Rather than pay the full amount of tax due, Applicant spent the proceeds from the sale on investing in the remainder of the company, paying off the mortgage on his home, paying off credit cards and loans, and setting aside funds for his children’s college.

The Judge’s Analysis

The Judge concluded that Applicant’s circumstances raised Guideline F disqualifying conditions, including the one found at Directive, Encl. 2, App. A ¶ 19(f): “failure to pay annual Federal, state, or local income tax as required.” He found that Applicant had mitigated some of the SOR debts, though not those arising from his tax obligations. He concluded that Applicant’s tax liabilities are ongoing and continue to cast doubt on his trustworthiness and reliability. He also stated that Applicant had not demonstrated responsible action in regard to his tax problems.

Discussion

Applicant contends that the Judge erred in holding that his tax debts raise security concerns. However, the Judge did not err in concluding that Applicant’s ongoing tax debts raise concerns that he may be lacking in qualities expected of those with access to classified information. Indeed, the Directive presumes that there is a nexus between admitted or proved conduct under any of the

Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 17-02595 at 3 (App. Bd. Jul. 31, 2018). Substantial tax obligations that have remained unresolved over several years, despite an apparent ability to have addressed them, are sufficient to uphold the Judge's conclusion under Disqualifying Condition 19(f). *See, e.g.*, ISCR Case No. ISCR Case No. 17-01256 at 3 (App. Bd. Aug. 3, 2018) (A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information).

Applicant cites to record evidence that he argues is favorable to him, such as his reliance upon poor advice from his former accountant, his having hired a new one, and his efforts to address his debts. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019). Moreover, despite Applicant's argument to the contrary, the Judge's whole person analysis complied with the requirements of Directive ¶ 6.3, in that he considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 14, 2017).

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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board