

KEYWORD: Guideline F

DIGEST: The Judge's adverse decision is sustainable on this record. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns or paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. Adverse decision is affirmed.

CASE NO: 18-02872.a1

DATE: 01/15/2020

DATE: January 15, 2020

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In Re: )  
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 ----- ) ISCR Case No. 18-02872  
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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**

Mark A. Myers, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 19, 2018, 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 November 7, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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 failed to evaluate Applicant’s case in light of the totality of the record evidence, thereby rendering a decision which was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is a retired E-7 from the U.S. military. He has attended college but does not have a degree. He worked in the Federal civil service beginning the year after his military retirement and has worked for a Defense contractor since 2016. He has held a security clearance for 30 years.

Applicant’s SOR alleges that he did not file his Federal income tax returns in a timely manner for tax years 2010 and 2016. Regarding the first instance, Applicant was deployed overseas. He had expected his son to file in his own right, so that Applicant would not claim him as a dependent. However, his son ultimately did not file a return, and Applicant did not file his own. In 2016, Applicant used tax preparation software to complete his return. He thought he had submitted it on time, but he received notification the IRS had not accepted the return. In addition, Applicant did not file his 2017 return in a timely fashion. This instance was not alleged in the SOR. Applicant filed his delinquent returns in 2019, admitting that receipt of the SOR spurred him to do so.

Applicant stated that he had intended to file his 2010 return on the following year but could not find all of the necessary paperwork. He stated that submission of his 2016 return was made difficult by the fact that he and his wife were living in different states as well as by data errors that he committed when using the tax software. Applicant stated that he had intended to file his 2016 return in 2017 but did not do so. He attributed his failures in 2010 and 2016 to laziness.

Applicant has acknowledged errors in judgment and now has a greater understanding of the importance of filing a return on time. He was remorseful and testified that he would not let it happen again. All of Applicant’s returns from 2012 through 2015 and his return for 2018 have been in a timely fashion.

### **The Judge’s Analysis**

The Judge acknowledged that Applicant’s 2017 late return was not alleged. He stated that he would consider it as part of his mitigation analysis. He concluded that Applicant had acted irresponsibly in regard to his delinquent tax returns, stating that his having filed them only after receipt of the SOR suggested that he might be unwilling to follow rules and regulations when his

personal interests are not at stake. He stated that, although they are now resolved, Applicant's tax problems are recent and not isolated. In the whole-person analysis, the Judge noted Applicant's many years of service to the U.S. while holding a security clearance. Nevertheless, the Judge concluded that the favorable evidence in the record was not enough to overcome what he termed a pattern of irresponsibility with respect to the timely filing of income tax returns.

## **Discussion**

Applicant argues that the Judge did not consider the record evidence as a totality. He cites to Applicant's testimony that his 2010 return had actually been prepared for submission before his son's decision not to file his own return, and he cites to his many years of service, during which time he held a security clearance, thereby evidencing a history of following rules and regulations. Applicant contends that the Judge's analysis failed to consider all of the relevant factors raised by the SOR allegations.

We do not find Applicant's arguments to be persuasive. The Judge made detailed findings about Applicant's circumstances and addressed much of what Applicant has cited in the analysis. A Judge cannot be expected to discuss every piece of record evidence, which would be virtually impossible. *See, e.g.*, ISCR Case No. 16-02243 at 3 (App. Bd. Nov. 30, 2018). The gravamen of his analysis was Applicant's having failed to file income tax returns until after receipt of the SOR, despite his awareness of the delinquencies. As we have noted in the past, a person who begins to address financial problems only after his eligibility for a clearance has been called into question may be less likely to follow rules and regulations when his personal interests are not at stake. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

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. 18-01482 at 2 (App. Bd. Sep. 6, 2019). Despite Applicant's arguments on appeal, we conclude that the Judge 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. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns or paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 17-01256 at 3. "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