

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 8, 2019, 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 September 17, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie C. Hess granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge’s favorable decision ran contrary to the weight of the record evidence and, therefore, was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

The Judge’s Findings of Fact

Applicant has worked for a Defense contractor since mid-2017. This is his first application for a security clearance. His SOR alleges that he filed for Chapter 7 bankruptcy protection in 2015, that he failed to file Federal income tax returns for 2013 through 2017, that he owes the IRS nearly \$8,000 in taxes for 2011, and that the IRS secured a tax lien against him in 2013 for nearly \$35,000.

Prior to 2013, Applicant and his wife were financially stable. This changed, however, when Applicant’s wife became the legal guardian of her 10-year-old cousin, an event that caused financial strain. Although Applicant was the sole income earner for a household of seven, his wife handled all of the finances, including filing income tax returns. During the time of greater financial stress, the wife overspent and let the family finances ““get ahead of us.”” Decision at 2, quoting from Tr. at 72.

Between 2009 and 2011, Applicant worked in a different state. In 2015, the IRS notified him that his employer had not withheld sufficient amounts from his pay and that he owed nearly \$35,000 in back taxes. This amount was included in Applicant’s Chapter 7 bankruptcy petition. The IRS subsequently recalculated this debt, reducing it to about \$8,000. Applicant entered into a payment agreement in January 2014, and as of July 2019 the balance owed on this debt was about \$4,500. The IRS applied a portion of Applicant’s tax refund to this debt, and it is now satisfied.

Applicant and his wife did not file their income tax returns in a timely fashion for tax years 2013 through 2017. Applicant’s wife was under the misapprehension that she had three years in which to file returns if they were owed a refund. In addition, she made an erroneous entry to a computer based tax program and had to manually complete the tax forms, which she put off doing. Since then all tax returns have been filed, and Applicant has no outstanding tax obligations. Applicant and his wife now share responsibility for managing the household finances.

The Judge’s Analysis

The Judge concluded that Applicant's problems resulted from circumstances outside his control, specifically that he had become the sole provider for his family and that his wife mishandled her responsibilities as household financial manager. She further concluded that Applicant had acted responsibly by seeking legal advice and filing for bankruptcy. She reiterated her finding that Applicant's outstanding tax obligations had been resolved. The Judge stated that Applicant had not been aware that his wife had failed to file their tax returns for 2013 through 2017 but that, after he did become aware, he ensured that all the returns were filed.

Discussion

Department Counsel argues that the Judge failed to consider significant evidence that runs contrary to her favorable conclusions. Department Counsel cites to evidence that undercuts Applicant's claim not to have been aware of his wife's late tax filings until after 2017. She also argues that the Judge failed to consider evidence that impugns Applicant's judgment and reliability. We find Department Counsel's arguments to be persuasive.

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. The applicant has the burden of persuasion as to obtaining a favorable decision. Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

The concern addressed in Guideline F is that financial problems "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations." Directive, Encl. 2, App. A ¶ 18. This is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money to satisfy delinquent debts. It also encompasses the risk that applicants who are financially irresponsible might also be irresponsible, unconcerned, or negligent in the handling and safeguarding of classified information. *See, e.g.*, ISCR Case No. 16-04112 at 3-4 (May 28, 2019). Failure to file and pay taxes falls within the scope of Guideline F. Such failure suggests that an applicant has a problem with abiding by well-established rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified

information. *See, e.g.*, ISCR Case No. 17-01256 at 3 (App. Bd. Aug. 3, 2018). *See also* ISCR Case No. 15-01031 at 4 (App. Bd. Jun. 15, 2016).

The evidence is not controverted that Applicant neglected to file his Federal income tax returns as required for 2013 through 2017. The question before the Judge was whether this failure impugned his judgment, reliability, and other qualities necessary to holding a clearance. The Judge found in Applicant's favor on the ground that his wife rather than he was responsible for handling the household finances, including filing tax returns. She stated that after Applicant became aware of this failure, he saw to it that the returns were filed. The gravamen of this issue is when Applicant knew or reasonably should have known that the returns were not filed. Contrary to the Judge's analysis, the file contains evidence that should have placed Applicant on notice that the returns had not been filed long before 2018, the year the unfiled 2017 taxes would have been due. For example, Applicant Exhibit (AE) B, an IRS tax transcript for tax year 2013, states that in November of 2014 Applicant was sent an inquiry regarding the non-filing of his return for the previous year. The inquiry was followed by a Notice in December 2014. Such a notice in and of itself should have made Applicant aware that his wife was not discharging the couple's obligation to comply with tax laws, yet there is no evidence that Applicant did anything to address this deficiency at that point. Moreover, in February 2017, Applicant answered "No" to the Security Clearance Application (SCA) question on taxes: In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance.

In addition, Government Exhibit (GE) 4, Applicant's 2015 bankruptcy filing, discloses that tax was not assessed for 2013 due to lack of a return and that the return for 2014 was not filed as well. GE 4 at 58. Applicant signed the bankruptcy petition certifying under penalty of perjury the information in it was true and accurate. Again, we note the discrepancy with Applicant's SCA. While the bankruptcy petition was prepared by an attorney, the contents of a document prepared and submitted to a court on Applicant's behalf, asserting the nature of his finances, is fairly attributable to him. Even if Applicant were actually unaware of the true state of his taxes, this ignorance was not reasonable and impugns his judgment. Finally, a reasonable person might note that even if tax returns are prepared by one's spouse, returns filed jointly, as those in question eventually were, would require the signature of both spouses. A person with an appropriate degree of concern for complying with laws and regulations might be expected to have noticed that he had not signed an income tax return for at least five years. All in all, the record contains evidence that Applicant knew or reasonably should have known that his tax returns had not been filed. The Judge did not address this contrary evidence in her decision, which, under the circumstances, was erroneous.

Department Counsel argues that the Judge erred by not addressing the inherent unreasonableness of Applicant's total reliance upon his wife to file returns and manage finances without devoting attention to whether she was properly handling their affairs. She cites to ISCR Case No. 13-00786 (App. Bd. Mar. 28, 2014), in which an applicant claimed that he was unaware of his debts because his wife handled the family budget. In affirming the denial of a clearance to this applicant, we stated the following:

Evidence that [the applicant] never looked at a credit report, never inquired about the possible impact of his wife's business practices on their finances even after learning of the delinquent mortgage payments for their residence, and did not know anything about numerous delinquent debts in his own name until confronted with them by a clearance investigator are sufficient to prompt skepticism in a reasonable mind about [the applicant's] attention to detail regarding important matters. *Id.* at 3.

We conclude that the reasoning underlying our holding in the cited case is pertinent to Applicant's situation as well. The degree of ignorance claimed by Applicant suggests an indifference to the proper satisfaction of legal obligations that draws into question his willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. Reliance upon a spouse or upon some other person to fulfill one's legal obligations places responsibility on an applicant to remain aware of the extent to which the spouse or other person is acting reliably on his or her behalf. Indeed, the Judge found that Applicant's spouse attempted to file returns using a computer program but made errors requiring her to file the returns manually, a task that overwhelmed her. This is not a minor matter but one that would entail significant legal and financial impacts. The record does not provide a clear explanation as to why Applicant would not have been aware of a problem like this and taken steps to file the returns himself. *See, e.g.*, ISCR Case No. 14-04437 at 3-4 (App. Bd. Apr. 15, 2016) regarding the security significance of an applicant's ongoing indifference to legal obligations.

Finally, we note that GE 4 at 32 lists a \$6,000 property loss in 2014 due to the fact that "Debtor's wife has a gambling addiction." Again, an applicant who entrusts serious financial responsibilities to a spouse with an addiction to gambling and who apparently exercises little to no oversight of her conduct can fairly be described as indifferent to his financial obligations. Although a Judge is not required to discuss each and every piece of record evidence in a file, he or she cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. *See, e.g.*, ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). In the case before us, Applicant's reliance upon his wife to file and pay taxes and his apparent indifference as to whether she was actually complying with the couple's legal obligations is a matter that seriously detracts from his effort to establish mitigation. The Judge's failure to have analyzed this aspect of the case significantly undermines her favorable decision.

We also note Department Counsel's argument that there is record evidence undermining the Judge's conclusion that Applicant has at last taken charge of his tax problems. For example, it is clear from the record that the delinquent returns were completely filed no earlier than June 2019. However, in his Answer to the SOR, signed in March 2019, Applicant asserted that all returns had been filed by that date, which was clearly not the case. Additionally, he testified at the hearing that to the best of his knowledge he had paid all of his tax obligations, although it was pointed out to him that there was still a remainder of about \$4,500. *Tr.* at 27. He stated that an expected tax refund would be applied to this remainder, although, as Department Counsel notes, there is no evidence in the record that this has in fact been done. In any event, the extent to which Applicant failed to make payments on several IRS payment plans undercuts a conclusion that he has consistently shown

responsible action in regard to his debts. Finally, we note Applicant's testimony and the Judge's finding that the inclusion of his wife's cousin into the household, along with his wife's going back to school and mortgage payments, were at the root of his security-significant circumstances. Tr. at 22. The summary of his clearance interview, however, attributed Applicant's financial problems to "lay off from employer . . . too many bills, and states to have mismanaged finances." GE 2, Answers to Interrogatories, at 8. Applicant adopted this summary as an accurate reflection of his answers to the interviewer's questions (*Id.* at 4), raising a reasonable inference that his explanations for his problems have not been totally consistent. These matters detract significantly from a conclusion that Applicant has finally achieved a reasonable understanding of his finances and that he is in control of the situation.

To sum up, Applicant failed to file his tax returns from 2013 through 2017, incurred a debt for delinquent back taxes, neglected to ensure that his wife was actually discharging the financial responsibilities that he entrusted her with to an extent that impugns his judgment, and has still not presented substantial evidence that he understands the root of his problems or that he has ensured that they will not return. He also made apparently inconsistent statements about the origin of his financial and tax difficulties. The Judge's decision ran contrary to the weight of the record evidence and failed to consider important aspects of the case. We conclude that, under any fair reading of the record Applicant's mitigation evidence was not sufficient to meet his burden of persuasion under the *Egan* standard.

Order

The Decision is **REVERSED**.

Signed: Michael Ra'anan

Michael 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