

KEYWORD: Guideline F

DIGEST: We note Applicant's Answer to the SOR, in which he stated that he had requested filing extensions. However, there is nothing in the record or in Applicant's appeal submission that would show that he had filed his returns on time, which is the gravamen of the case. Considering Applicant's arguments as a whole, we find no error that would have affected the outcome of the decision. Therefore, any such errors are harmless. Adverse decision is affirmed.

CASE NO: 19-01938.a1

DATE: 03/17/2020

DATE: March 17, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-01938
)	
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 July 3, 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 decision on the written record. On January 9, 2020, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen Lynch 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 in her findings of fact; whether the Judge’s whole-person analysis was erroneous; 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 and Analysis

Applicant is divorced and remarried, with four children. He has worked for his current employer since 1995 and has held a security clearance since 2010. Applicant’s SOR contained one allegation: that he failed to file, as required, Federal and state income tax returns for tax years 2016, 2017, and 2018. Applicant admitted that he was late in requesting extensions for filing his tax returns. He provided proof of filing his tax returns for the years in question¹ and stated that he was not a good bookkeeper. In addition to the above, Applicant owed over \$45,000 in back taxes for 2016, but he has satisfied this debt.

The Judge concluded that Applicant had not provided a sufficient explanation for his security-significant conduct. In the whole-person analysis, she noted Applicant’s employment status and his having held a clearance for several years. However, she also noted that he had filed his delinquent returns in 2019. The Judge concluded that Applicant had not met his burden of persuasion regarding mitigation.

Discussion

Applicant challenges some of the Judge’s findings of fact. For example, he cites to evidence that his first marriage ended with the passing of his wife rather than divorce; that he has three rather than four living children; that he has worked for his current employer since 2017 rather than 1995; and that he filed requests for extensions.

Although his appeal brief includes matters from outside the record that we cannot consider (Directive ¶ E3.1.29), the evidence within the record supports Applicant’s arguments concerning his family circumstances, employment history, and his having held a clearance prior to 2010. We note Applicant’s Answer to the SOR, in which he stated that he had requested filing extensions. However, there is nothing in the record or in Applicant’s appeal submission that would show that he had filed his returns on time, which is the gravamen of the case. Considering Applicant’s

¹Applicant’s Response to the SOR shows that these returns were filed in 2019.

arguments as a whole, we find no error that would have affected the outcome of the decision. Therefore, any such errors are harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). We conclude that the Judge’s material findings are supported by substantial evidence or constitute reasonable inferences that could be derived from the evidence. *Id.* Moreover, we conclude that the Judge’s whole person analysis complies with the requirements of Directive ¶ 6.3, in that she considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 18-02925 at 3 (App. Bd. Jan. 15, 2020).

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)). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns 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 (App. Bd. Aug. 3, 2018).

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