

KEYWORD: Guideline F

DIGEST: At the hearing, Applicant testified that he thought the tax preparation service had filed all of his delinquent Federal tax returns, and he would provide documents showing those delinquent tax returns had been filed. To the extent he is now contending that he met his burden of production by providing what was available to him, that assertion is not persuasive. The burden was on Applicant to mitigate the security concerns arising from his tax filing delinquencies. Directive ¶ E3.1.15. The Judge committed no error in considering that Applicant failed to prove he filed some of the alleged delinquent tax returns. Adverse Decision Affirmed.

CASE NO: 19-02493.a1

DATE: 08/02/2021

DATE: August 2, 2021

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In Re:)	
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-----)	ISCR Case No. 19-02493
)	
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 September 30, 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 May 10, 2021, after the hearing, Administrative Judge Robert E. Coacher 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 the findings of fact 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, who is in his 50s, served honorably in the military for 20 years, retiring about 12 years ago. He has earned an associate's degree. Married for over 30 years, he has two adult children. He has been working at his current job since late 2015.

The SOR alleged that Applicant failed to file, as required, his Federal income tax returns for 2014-2016 and his state income tax returns for 2014-2015, that he owed past-due Federal taxes of about \$1,900 for 2017, and that he owed past-due state taxes of about \$2,300 for 2012, 2016, and 2017. In responding to the SOR, he admitted all the allegations. He experienced periods of unemployment in 2009-2010 and 2015. In addition to his periods of unemployment, he attributed his financial problems to other reasons; such as, being the sole source of income for his family due to his wife's medical issues, stress and financial strain from becoming the conservator for his grandfather, and a motorcycle accident that required to go on short-term disability.

In responding to interrogatories, Applicant provided documentation showing the IRS filed for him a substitute 2014 Federal tax return, his 2015 Federal tax return had not been filed as of February 2019, his 2016 Federal income tax return was filed in October 2017 for which he was assessed a penalty, his 2015 state income tax return had not been filed, and he owed the state about \$2,300 in delinquent taxes. In early 2020, Applicant hired a tax preparation service to assist him in filing his late and delinquent Federal income tax returns, which also included those for 2012-2013 and 2018. He did not provide documentation showing he filed his 2014 and 2015 Federal income tax returns. His 2019 Federal tax refund of about \$1,280 was applied to his 2017 delinquent taxes. No further evidence of payments toward that tax delinquency was provided. Applicant is waiting for his Federal income tax returns to be processed before filing his missing state tax returns for 2014 and 2015. He does not know how much he owes in delinquent state taxes.

Coworkers, colleagues, and a former supervisor describe him as loyal, dedicated, and worthy of a security clearance. Several wrote about the difficulties he has encountered. His performance appraisals for 2016-2020 rate him as outstanding or superior.

Applicant failed to produce sufficient evidence showing that recurrence of tax problems is unlikely. Even after seeking professional assistance, the record is unclear as to whether his 2014

and 2015 Federal income tax returns have been filed. He has not yet addressed his state tax returns and debt. He has failed to put forth a good-faith effort to address his tax problems.

Discussion

Applicant's appeal brief contains documents and assertions that are not included in the record. This includes two documents that post-date the Judge's decision. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

In his appeal brief, Applicant raises four objections to the Judge's decision. First, he notes the Judge misspelled his first name. This was a harmless error because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No 11-15184 at 3 (App. Bd. Jul. 25, 2013). Second, he argues that he provided, as he said he would during the hearing, what information he was able to obtain from the tax preparation service regarding the delinquent returns. This assertion, however, does not match his testimony. At the hearing, Applicant testified that he thought the tax preparation service had filed all of his delinquent Federal tax returns, and he would provide documents showing those delinquent tax returns had been filed. Tr. at 20, 24-25, and 40-45. To the extent he is now contending that he met his burden of production by providing what was available to him, that assertion is not persuasive. The burden was on Applicant to mitigate the security concerns arising from his tax filing delinquencies. Directive ¶ E3.1.15. The Judge committed no error in considering that Applicant failed to prove he filed some of the alleged delinquent tax returns. Third, he cites to an IRS website showing it will only accept "amended tax returns" for the past three years and argues that he cannot file amended tax returns for 2012 and 2014-2016. This contention lacks merit. The SOR did not allege that he failed to file "amended tax returns." Rather, it essentially asserts he failed to file annual income tax returns for certain years as required by law. It is fair to say that from the IRS's perspective a tax return cannot be amended unless it has first been filed. His citation to the IRS website dealing with "amended tax returns" is not relevant in this proceeding. Fourth, Applicant states the tax preparation service told him not to pay any delinquent taxes to the IRS while they were negotiating a settlement. Such advice, however, neither serves as a defense, compels the Judge to render a favorable security clearance decision, nor precludes the Judge from considering that the delinquent tax debt remains unresolved. As the trier of fact, the Judge was responsible for weighing the evidence as a whole and deciding whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. None of Applicant's arguments are sufficient to show that the Judge weighed the evidence or reached conclusions in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. In short, Applicant's objections fail to establish that the Judge committed any harmful error.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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 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