

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 7, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 18, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant is in his forties. He has been working for defense contractors for over 20 years and has held a security clearance during that employment. He is divorced with no children. The SOR alleged that Applicant failed to file, as required, his Federal and state income tax returns for 2009-2011 and 2015-2018. In responding to the SOR, Applicant admitted the tax filing deficiencies for 2015-2018 and denied the earlier ones.

In a 2012 security clearance application (SCA), Applicant disclosed that he had not filed his Federal and state tax returns for 2009-2011. During a background interview, he attributed that failure to “not getting around to doing it.” Decision at 2, quoting from Government Exhibit (GE) 3 at 4. In a 2019 SCA, he disclosed that he had not filed his Federal and state income taxes for 2015-2017. During a background interview, he indicated he “is bad at filing his taxes on time” and “does not have the motivation to complete the paperwork in time.” Decision at 2, quoting from GE 3 at 2. At the hearing, Applicant noted that his more recent tax filing deficiencies began when he separated from his wife, he dreaded doing taxes, and the pending hearing motivated him to file his returns. He claimed that, in 2014, a tax professional prepared his Federal and state income tax returns for 2009-2011 but provided no documentary evidence to show they were filed. As of October 19, 2020, his IRS tax transcripts reflect that he had not filed his Federal income tax returns for 2016-2018.

In May 2021, Applicant completed his Federal and state income tax returns for 2014-2019. He was entitled to Federal tax refunds for each of those years. He did not provide documentation showing those returns were filed. A credit report reflects all of his debts are current. None of the Guideline F mitigating conditions were fully established. “Failure to file tax returns suggests an applicant has a problem with complying with well-established rules and systems.” Decision at 6. Applicant did not mitigate the security concerns arising from his failure to file his Federal and state tax returns in a timely manner. The Judge indicated that, even if Applicant had filed his tax returns for 2015-2018, such action would not have change his decision.

Discussion

In his appeal brief, Applicant asserts, for example, that he self-disclosed his tax filing deficiencies, he has filed his tax returns for 2014 and 2018 and qualifies for tax refunds for those years, his credit report reflects zero late payments on his debts, and he lives within his means. He also notes that, due to COVID-19 shutdowns, his tax returns for 2014-2018 have not yet been processed. His arguments fail to establish that the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. It is well established that a person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns as required, 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. 15-08782 at 3 (App. Bd. Apr. 5, 2017).

Applicant has failed to establish 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 the record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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 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