

The Judge's Findings of Fact

Under Guideline F, the SOR alleged that Applicant did not timely file his federal income tax returns for at least the 2013 through 2017 tax years (SOR ¶ 1.a.); that he failed to pay his federal income taxes for at least the 2013 through 2016 tax years (SOR ¶ 1.b.); and that he owed the IRS approximately \$18,300 for unpaid income taxes from the 2014 through 2016 tax years (SOR ¶ 1.c.). In responding to the SOR, Applicant admitted all allegations.

Upon motion of Department Counsel prior to the hearing, the Judge permitted amendment of the SOR. As amended, SOR ¶ 1.b. alleged that Applicant failed to timely pay his federal income taxes between 2013 and 2018, and SOR ¶ 1.c. alleged that Applicant owed \$28,451 for unpaid taxes from tax years 2014 through 2018. As amended, Applicant denied ¶¶ 1.b. and 1.c.

Applicant is in his mid-fifties. Since 2003, he has worked for a defense contractor in a position that required him to deploy overseas in support of U.S. operations. In his 2018 security clearance application, Applicant disclosed that he filed his federal and state income tax returns late for the 2012, 2013, and 2017 tax years and that he owed an estimated total of \$4,100 in unpaid taxes. Available information established that Applicant filed his federal returns late for tax years 2013 through 2020. Additionally, the background investigation revealed that, in March 2019, Applicant resolved a \$34,391 debt for unpaid state taxes for the 2013 through 2016 tax years.

In July 2015, Applicant entered into a repayment agreement with the IRS under which he initially paid \$151 per month. Over the years, his monthly payments have increased; he currently pays \$350 per month. At hearing, Applicant's evidence established that he owed \$28,451 for unpaid taxes in December 2020 and that he had reduced his total to \$19,022 by August 2021, having satisfied the debts for tax years 2014 and 2015.

Applicant attributed his failure to file his 2013 returns to confusion: his pay had increased from working overseas, he owed additional taxes, and he was unsure about how to file his returns given the unexpected taxes due. Applicant also claimed that he did not know how to change his withholdings to avoid owing a payment upon filing. It was not until 2016 that Applicant took action to file his past-due returns with the help of a commercial tax preparation company. Subsequently, a private tax preparer assisted him with his returns for 2018 through 2020. Applicant is now current on all of his tax filing obligations, and his withholdings are appropriate for his income.

Applicant's current finances are otherwise sound, with no outstanding debt, a robust income, and a healthy investment portfolio. Applicant acknowledged that he has the means to resolve his current tax debt, but has chosen not to do so, as he is satisfied with the monthly payment plan.

The Judge's Analysis

Applicant did not timely file his Federal and state income tax returns for at least five consecutive tax years. Additionally, he failed to pay his federal taxes for six consecutive years, amassing a debt for unpaid taxes in excess of \$28,000. Although he is current on his tax filing

obligations, he still owes about \$19,000 in unpaid taxes. Despite having the resources to resolve the debts more quickly, he is unwilling to resolve his tax debts outside of his agreement with the IRS. As amended, SOR 1.b. is resolved for Applicant because it is subsumed by the more informative allegation at SOR 1.c. However, the Government’s information sufficiently supports SOR 1.a. and 1.c.

With regard to the mitigating conditions, the Judge concluded, in pertinent part:

AG ¶¶ 20(a) and 20(d) do not apply because Applicant’s tax debt remains largely unpaid and Applicant chooses not to use the resources he has at hand to more timely resolve his tax debts. AG ¶ 20(g) applies because he reached a repayment agreement with the IRS in 2015; however, the value of this mitigation is attenuated by his continued failure to file and pay his taxes even after he entered into the agreement. Applicant has the means to pay this debt now but has chosen not to. At the current \$370 monthly rate of repayment, his \$19,000 remaining balance will take another 51 months to resolve.

AG 20(b) does not apply because Applicant did not show that his failure to file and pay his taxes as required arose from circumstances beyond his control. Making more money usually means having to pay more taxes. When Applicant was faced with that prospect, he stopped filing his returns. Although he reached an IRS-approved agreement in 2015, he did not address the underlying problem until 2017, when he filed his past-due returns and adjusted his tax withholdings. [Decision at 6–7.]

Discussion

In deciding whether the Judge’s rulings or conclusions are erroneous, we will review the Judge’s 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, e.g.*, ISCR Case No. 14-02563 at 3–4 (App. Bd. Aug. 28, 2015).

In his appeal brief, Applicant contends that the Judge erred in determining that he had failed to timely file his federal returns for the 2013 through 2020 tax years and that the Judge then relied upon that erroneous finding in his analysis. We conclude that Applicant’s argument has merit. Specifically, our review of the record confirms that the Judge erred in the following findings:

- a. “Available information ... showed that Applicant has been late in filing his federal returns on time for the 2013 through 2020 tax years.” Decision at 3.
- b. “It was not until 2016 that Applicant took action to file his past-due returns with the help of a commercial tax preparation company.” *Id.* at 4.

- c. “Information obtained by investigators and adjudicators during the ensuing background investigation showed that in March 2019, he resolved a \$34,391 debt for unpaid state taxes for the 2013 through 2016 tax years.” *Id.* at 3.

Contrary to the Judge’s findings, the record establishes that Applicant filed his federal tax returns on time for tax years 2014, 2018, 2019, and 2020.¹ Additionally, the record confirms that Applicant did not delay filing until 2016, but instead filed his 2013 return in December 2014 and filed his 2014 return on time in April 2015. Said differently, before Applicant entered into his repayment plan for 2013 and 2014 taxes in July 2015, he had filed the returns for both years. We cannot say these errors are harmless, as the Judge references Applicant’s repeated failure to file returns at least four times in his analysis and whole person evaluation. Moreover, the Judge’s error regarding tax years 2018 through 2020 is particularly weighty, as it pertains to Applicant’s most recent tax history and compliance with tax obligations.

Regarding the Judge’s finding of a large state tax delinquency, our review of the record reveals no evidence that Applicant had a \$34,391 debt for unpaid state taxes that he resolved in March 2019. Instead, the evidence establishes that Applicant paid approximately that amount in state taxes for tax years 2013 through 2016, with 2013 taxes apparently paid late, as interest and penalties were also paid. GE 2 at 4. Delinquent state taxes were not alleged in the SOR, not inquired into at the hearing, and not the primary focus of the Judge’s analysis or decision. Nevertheless, the Judge erroneously found that the Applicant had a state tax delinquency greater than his federal tax delinquency, which he resolved in 2019, after adjudication of his clearance was ongoing. We cannot assume this error played no role in the Judge’s analysis or decision and was, therefore, harmless.

Accordingly, we conclude that the best resolution of this case is to remand the case to the Judge for correction of these errors and for further processing consistent with the Directive. As provided in Directive ¶ E3.1.35, the Judge shall, upon remand, issue a new decision in the case. Other issues raised in the appeal are not ripe for consideration at this time. The Board retains no continuing jurisdiction over a remanded case. However, a decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 to E3.1.35.

¹ Of note, the IRS delayed tax filing deadlines for tax years 2019 and 2020 due to COVID-19. *See* <https://www.irs.gov/coronavirus/coronavirus-tax-relief-filing-and-payment-deadlines>.

Order

The decision is **REMANDED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board