

KEYWORD: Guideline F

DIGEST: The filing of tax returns is both a legal and a financial obligation. Adverse decision affirmed.

CASENO: 14-02930.a1

DATE: 12/09/2015

DATE: December 9, 2015

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In Re: )  
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 ----- ) ISCR Case No. 14-02930  
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 Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

William C. Fanning, Jr., Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 7, 2014, 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 14, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 his whole-person analysis; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

Applicant served in the U.S. military from 1967 to 1973. He holds an associate's degree and has received several technical training certificates. He has held a clearance since 1973.

Applicant did not file Federal or state income tax returns for tax years 2004 through 2013. In his response to the SOR, Applicant admitted the two allegations, stating that he was working on submitting returns for both taxing authorities by April 15, 2015.

Applicant divorced his second wife in 2006, after a 2003 separation. He stopped filing his returns after this separation, due to his emotional disruption and to his difficulty in obtaining necessary documents. He did not file for more recent years because he was devoting his time to tending a critically ill fiancée. In May 2015, Applicant retained a lawyer and in June an accountant. Applicant owes no back taxes. His 2013 and 2014 returns have been filed and he stated that the others would be filed "shortly." Decision at 4. Applicant lost refunds for tax years 2004 to 2010.

### **The Judge's Analysis**

The Judge concluded that Applicant's circumstances raised the following Disqualifying Condition: "failure to file annual Federal, state, or local income tax returns as required[.]" Directive, Enclosure 2 ¶ 19(g). The Judge noted that Applicant did not file his delinquent returns until long after he had declared an intent to file them by April 2014. The Judge cited to Applicant's regular mortgage payments and to his timeliness on paying other bills as evidence of his financial management skills, which, he stated, showed that Applicant could comply with rules and regulations "when it is in his interest to do so." *Id.* at 7. Even though acknowledging Applicant's marital separation and the death of his fiancée, the Judge stated that Applicant's procrastination in filing his returns was irresponsible. In the whole-person analysis, the Judge noted Applicant's military service and many years of holding a security clearance. However, he stated that Applicant should have known that he had to file income tax returns, even if he were owed refunds. He stated that Applicant's track record of 10 years procrastination made it too soon to conclude that his security-significant conduct was behind him.

### **Discussion**

Applicant notes that the only Disqualifying Condition that the Judge applied was 19(g). He argues that this Guideline is “intended to concern someone in financial difficulties.” Appeal Brief at 2 (emphasis in original). To the extent that he is contending that Applicant’s case does not raise security concerns, Guideline F is not limited to cases in which an applicant is financially insolvent or is experiencing difficulty in paying debts. The Guideline F concern states, in pertinent part, that failure

to meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Directive, Enclosure 2 ¶ 18.

The filing of tax returns is both a financial and a legal obligation. Applicant’s admitted failure to have done so for many years is sufficient to raise a concern that he may be unwilling to follow other rules and regulations, such as those that govern the handling of classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015) (A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information). *See also Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff’d*, 367 U.S. 886 (1961). Indeed, as the Judge noted, Directive, Enclosure 2 ¶ 19(g) explicitly provides that failure to file tax returns is a circumstance that can raise a security concern. Moreover, the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). In this case, Applicant’s argument is not enough to rebut the presumption of nexus. We find no reason to disturb the Judge’s conclusion that Applicant’s conduct raised Financial Considerations security concerns.

Applicant cites to evidence of his having filed his tax returns. He argues that he himself is the only one hurt by his conduct, insofar as he is precluded from receiving refunds for earlier years. He also argues that there is no penalty for failure to file tax returns. Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Although the Judge found that Applicant had filed his most recent returns by the close of the record, his analysis focused on the extent to which Applicant’s conduct called his judgment into question. In particular, his conclusion that repeated failure to file tax returns over a ten-year period is not reasonably explained by a divorce or a critically ill fiancée is sustainable, given the record that was before him. Applicant has not provided a reason to disturb the manner in which the Judge weighed the evidence. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015) (Even if an applicant has paid his delinquent debts or otherwise resolved his financial deficiencies, a Judge may still consider the underlying circumstances in evaluating the applicant’s security eligibility).

Concerning Applicant’s argument about penalties, we note that 26 U.S.C. §§ 6651 and 7203 provide civil and criminal penalties respectively for failure to file federal returns. There is nothing in the record to show that these provisions do not apply to Applicant as a matter of law or as a matter

of discretion by tax officials. As it stands, lack of record evidence that tax officials have sought enforcement against Applicant is not sufficient to mitigate the concerns about Applicant's judgment that are the central issue in his case. This also holds true for his argument that no one but him has been hurt by his malfeasance.

Applicant cites to language in his interview summary to the effect that no one knows about his tax issues and that they cannot be used against him. However, this represents Applicant's answers to the interviewer's questions, not the interviewer's independent judgment as to Applicant's security eligibility. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015). Applicant challenges the Judge's application of the whole-person factors, repeating his argument that he is financially secure and devoid of anything that would cast doubt upon his judgment and reliability. We conclude that the Judge's whole-person analysis complies with the requirements of the Directive in that he considered Applicant's security-significant conduct in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody

Administrative Judge  
Member, Appeal Board