

KEYWORD: Guideline F

DIGEST: Applicant failed to file federal income taxes from 2001 through 2006 and state income taxes from 1992 through 2006. Adverse decision affirmed.

CASENO: 07-10448.a1

DATE: 06/25/2009

DATE: June 25, 2009

_____)	
In Re:)	
)	
-----)	ISCR Case No. 07-10448
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 3, 2008, DOHA 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 February 20, 2009, after the hearing, Administrative Judge Robert C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law.

The Judge made the following factual findings: Applicant failed to file federal income tax returns for the years 2001 through 2006 and state income tax returns for the years 1992 through 2006. As a result, the Internal Revenue Service (IRS) filed a lien for \$8,844 against Applicant in 2001, and state tax authorities filed two liens totaling \$9,148 in 2006. Due to another debt, Applicant incurred a judgement for \$892 in 2000. Applicant has not provided documentation of payment of any of those amounts or of five other delinquent debts. Due to a period of unemployment, Applicant fell behind on child-support payments and his other financial obligations. He now owes only back-payments for child support.

In December 2008, Applicant hired a tax relief firm to file his tax returns and settle his tax liabilities. Applicant then filed an installment agreement request with the state tax authorities and executed a power of attorney for the firm to represent him in negotiations with the IRS. However, as of the date of the hearing (December 15), Applicant had not filed any of the overdue tax returns or made any payments toward the tax liens. Although the record was held open for Applicant to submit completed tax returns, installment agreements, and other evidence of his efforts to resolve his tax liabilities and other debts, Applicant did not submit “tangible evidence” in that regard. Decision at 3-4. It was not clear at that time whether Applicant had paid the \$3,900 charged by the tax relief firm for their services. Applicant had agreed to pay the firm \$1,950 by January, but provided no documentation of payment.

Along with his appeal, Applicant submitted completed federal tax forms and correspondence from the IRS. Under Directive ¶ E3.1.29, the Board cannot consider this new evidence.

Applicant argues that through his contacts with the IRS he has mitigated any security concerns that might exist under Guideline F and that the Judge either did not consider or did not give adequate weight to his evidence of mitigation. There is a rebuttable presumption that the Judge considered all the record evidence, unless the record demonstrates otherwise; and there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 04-08134 at 3 (App. Bd. May 16, 2005). Applicant admitted the SOR allegations against him. The burden then shifted to Applicant to extenuate or mitigate the security concerns raised by those allegations. Directive ¶ E3.1.15. Here, the Judge discussed the possible application of relevant mitigating conditions and concluded that Applicant did not present evidence sufficient to overcome the security concerns raised. The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Thus, the presence of some mitigating evidence does

not alone compel the Judge to make a favorable security determination. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.* ISCR Case No. 06-23384 at 3 (App. Bd. Nov. 23, 2007).

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board