

KEYWORD: Guideline F

DIGEST: The Judge's conclusions regarding Applicant's failure to file taxes were sustainable based on the record before her. Adverse decision affirmed.

CASENO: 14-00857.a1

DATE: 04/07/2015

DATE: April 7, 2015

In Re:)
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 -----) ISCR Case No. 14-00857
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)
 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 May 1, 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 decision on the written record. On January 22, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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’s findings of fact contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Finding of Fact

Applicant served in the Army from 1978 to 1998. After retiring he worked for Federal contractors overseas and for his current employer since 2009. He has held a security clearance since 1999. Applicant divorced his first wife in 1981. He remarried in 1984 but separated from his second wife in 2006.

Applicant did not file Federal income tax returns for tax years 2006 through 2009. In November 2013, he submitted to a clearance interview. He stated that he had thought he was exempt from filing because his income was below the taxable amount for persons working overseas. However, the threshold amount for filing was \$18,700 for 2009 and lesser amounts for previous years. He provided no documents to the effect that his gross income was below these amounts. He provided a 2009 tax return showing a gross income of \$63,406.

Applicant told the interviewer that he received a letter in 2011 from the IRS inquiring about why he did not have Federal taxes withheld from his pay. He stated that he showed the IRS a form exempting him from withholding. The Judge stated that Applicant’s interview, as amended during his answer to DOHA interrogatories, was confusing. She found that it was not consistent with the interviewer’s summary of Applicant’s answers in significant ways.

Applicant filed his 2009 tax return in August 2013 and his 2012 return the following November. IRS transcripts show that Applicant filed his 2006 and 2007 returns in October 2014, his 2008 return in July 2014, and his 2009 return in June 2014. “After 2011, Applicant was on notice that he was required to file federal income tax returns for prior tax years. He provided no explanation why he failed to do so until 2014.” Decision at 3.

The Judge’s Analysis

The Judge noted that Applicant has worked for Federal contractors overseas since 1998 yet he did not file his 2006 through 2009 tax returns until 2014. She cited to his statement that he did not believe he had to file due to not meeting the income threshold. She noted, however, that he had provided no explanation as to why he presumably had filed for prior years. Despite evidence that Applicant had been on notice since 2011 of his tax obligations, he did not file for the years in

question until 2014 and offered no explanation for this delay. She stated that, despite some evidence in mitigation regarding his having finally filed his taxes, Applicant had failed to meet his burden of persuasion.

Discussion

Applicant’s brief provides some explanation and context for the interview summary. He argues that the Judge erred in her findings regarding this summary. Among other things, he states that the Judge found that he did not start filing his delinquent tax returns until he had been placed on notice by the IRS in 2011 of his obligation to file. He stated that, to the contrary, in 2011 the IRS had inquired about withholding, not filing. We have examined Applicant’s brief in light of the record as a whole. The Judge found that Applicant had been placed on notice of his obligation to file as early as 2011 yet did not comply until nearly three years later and provided no satisfactory explanation for this delay. This is a reasonable interpretation of the record that was before her. Even if she erred as to the precise nature of the IRS communication that placed Applicant on notice, it did not affect her overall decision. The Judge’s material findings of security concern are supported by substantial record evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 14-00398 at 3 (App. Bd. Feb. 10, 2015). *See* ISCR Case No. 13-00375 at 2 (App. Bd. Mar. 28, 2014) for definition of “substantial evidence.”

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