

KEYWORD: Guideline F

DIGEST: Applicant has neither rebutted the presumption that the Judge considered all of the evidence in the record nor shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 14-04159.a1

DATE: 08/01/2016

DATE: August 1, 2016

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 14-04159
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 17, 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 May 23, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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 were based upon substantial record evidence and whether the Judge's adverse decision was arbitrary, capricious or contrary to law. Consistent with the following, we affirm.

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

Applicant's SOR allegations arose from his failure to file and pay Federal and state income taxes for a number of years. His tax problems originated with his having employed an accountant who was "too aggressive with regard to income tax deductions." Decision at 2. The IRS questioned his tax returns, so Applicant changed accountants and paid estimated taxes. Applicant relied on his spouse to gather and deliver tax documentation to their new accountant, but the documents became lost and Applicant's spouse did not keep copies. Applicant suspects that his spouse's unreliability may result from health issues. From 2001 until 2011, Applicant did his taxes himself. He performed estimated tax filings, but he never completed final income tax returns. After becoming aware of a tax lien, Applicant hired a new accountant, who entered into settlement negotiations.

Applicant's total tax debt is about \$465,000, although he believes that he will ultimately pay between \$40,000 and \$50,000. Applicant has sufficient resources to satisfy his ultimate tax debt. He earns a little over \$200,000 a year and estimates the gross value of his assets as between \$4 million and \$5 million.

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

The Judge stated that, despite representations to the contrary, there is little evidence that Applicant's income tax filings would be completed by the end of 2015. He noted evidence that Applicant had tasked his spouse with managing the couple's tax materials, despite knowing that she was less than reliable. He stated that Applicant's arguments and positions regarding his negotiations with tax authorities are not clear and that it is difficult to tell if Applicant has a reasonable basis to dispute the amounts at issue. The Judge suggested that, given Applicant's sizeable assets, the protracted nature of his tax negotiations may be due to his unwillingness to settle.

In the whole-person analysis, the Judge cited to evidence of Applicant's excellent professional credentials. However, the Judge found it "inexplicable" that Applicant would have trusted his spouse with important tax responsibilities, given his belief in her unreliability. *Id.* at 8. He also cited to evidence that Applicant did not preserve his records even after he assumed responsibility for handling the couple's taxes. Though noting that Applicant had made some efforts to resolve his tax problems, the Judge concluded that, on the whole, the record did not support a conclusion that Applicant had mitigated the security concerns in his case.

### **Discussion**

Applicant challenges the Judge's findings. After examining the record, we conclude that the Judge's material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant has not cited to any harmful error in the Judge's findings. Moreover, Applicant has neither rebutted the presumption that the Judge considered all of the evidence in the record nor

shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016).

We conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing and paying taxes when due, 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. 14-01894 at 5 (App. Bd. Aug. 18, 2015). 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 Y. Ra’anan

Michael Y. 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