

KEYWORD: Guideline F

DIGEST: Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. Adverse decision affirmed.

CASENO: 14-04752.a1

DATE: 05/17/2016

DATE: May 17, 2016

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In Re: )  
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Applicant for Security Clearance )  
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ISCR Case No. 14-04752

**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 June 16, 2015, 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 March 18, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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: (1) whether the Judge decided the case on the full record, and (2) whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant served in the military from 1975 to 1980 and then in the inactive reserve from 1980 to 1981. He has been employed by a Federal contractor since 1984. He admitted that he failed to file his Federal and state income tax returns in a timely manner. He indicated that, since the IRS filed his 2007 and 2008 tax returns for him, he did not need to submit them unless he was seeking a refund. He filed his 2009 through 2012 Federal income tax returns in February 2015. The filings of his state income tax returns were delayed because he first needed to complete his Federal tax returns. At the hearing, he admitted that he had not yet filed his 2013 and 2014 Federal and state income tax returns.

Although Applicant was adamant that he always overpaid his taxes through payroll withholdings, the IRS garnished his wages to resolve a delinquent Federal tax debt of \$700. The IRS also determined Applicant owed more than \$5,000 in delinquent taxes for 2008. He resolved the 2008 tax debt before he received the SOR and indicated that money would be refunded to him once he submitted his 2008 Federal income tax return.

### **The Judge’s Analysis**

The Judge noted that Applicant attributed his tax filing delinquencies to traveling extensively for work, a filing problem that arose from having a foreign-born spouse, and ill health, but concluded the filing delays were not reasonable or responsible behavior. The Judge noted that, while Applicant maintained he always received a refund, the IRS garnished his wages for a time. The Judge concluded that Applicant did not show good judgment by failing to file his Federal and state income tax returns in a timely manner.

### **Discussion**

Applicant contends that the Judge did not consider all of the evidence, including his favorable evidence and his coordination with the IRS to resolve his tax problems. The Judge made findings about much of that evidence. Applicant has not rebutted the presumption that the Judge

considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016).

Applicant also argues that the Judge should have found his security concerns mitigated. His arguments in essence amount to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06634 at 2 (App. Bd. Apr. 28, 2016). Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Evidence that Applicant has had tax delinquencies for many years, some that he failed to address by the close of the record, supports the Judge’s ultimate conclusion.

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

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