

KEYWORD: Guideline F

DIGEST: Applicant challenges the Judge’s findings of fact. However, the Boards concludes that the Judge’s findings fairly capture the material facts of the case. Adverse decision affirmed.

CASENO: 14-05795.a1

DATE: 04/26/2016

DATE: April 26, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-05795
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Wayne Roberts, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 17, 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 decision on the written record. On February 9, 2016, after considering the record, 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 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 failed to file Federal and state income tax returns for tax years 2012 and 2013. In addition, he owes \$88 on a collection account. Applicant stated that he forgot to file his returns because a relative, who had previously done so for him, passed away. He filed his returns in May 2015, which was after the date of the SOR. Applicant contends that he has tried to contact the creditor for the collection account. He provided no documentary support for his claims regarding having filed his returns and having attempted to contact the creditor.

The Judge's Analysis

The Judge noted Applicant's explanation that he had forgotten to file his returns. He reiterated his findings about a lack of corroboration for Applicant's various statements. He concluded that the file contains no evidence to establish any of the mitigating conditions. He stated that, while there is no reason to believe Applicant's statements are untrue, the lack for corroboration results in a conclusion that he has not met his burden of persuasion.

Discussion

Applicant challenges the Judge's findings of fact. He cites to various things in the record that he believes are mitigating and appears to argue that the Judge's failure to have made more detailed findings impaired his evaluation of the case. However, a Judge is not expected to make findings about every piece of evidence in the record, which would be an impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). We conclude that the Judge's findings fairly capture the material facts of the case. Applicant has not cited to a finding, or to any omission of facts, that would amount to harmful error. The Judge's material findings are based upon substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). In essence, Applicant contends that the Judge did not consider evidence that was favorable to him. However, a Judge is presumed to have considered all of the evidence in the record, and Applicant has not rebutted that presumption. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Applicant notes a comment by the Judge that there is no reason to believe that Applicant's written presentation is untruthful, thereby challenging the Judge's other comments about a paucity of corroborating evidence. He appears to argue that, if the Judge did not find Applicant's assertions to be false, he should have found them mitigating. However, in a DOHA proceeding, the Applicant bears the burden of persuasion that he should have a clearance. It is not erroneous for a Judge to conclude that an applicant's statements may be credible as far as they go but that they do not go far enough to meet the applicant's burden of showing that it is "clearly consistent with the interests of the national security" for him to have a clearance. *Department of the Navy v. Egan*, 484 U.S. 518,

528 (1988).¹ We note the Judge’s finding that Applicant did not file his returns until he had received the SOR, which he could properly conclude detracted from Applicant’s case for mitigation.² *See, e.g.*, ISCR Case No. 14-01243 at 3 (App. Bd. Jun. 18, 2015) for the proposition that the timing of an applicant’s corrective action is a relevant consideration. Applicant’s argument is a challenge to the Judge’s weighing of the evidence, but that 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. 12-01500, *supra*. Applicant has submitted new evidence, which we cannot consider. Directive ¶ E3.1.29.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Failure to file tax returns suggests a problem with complying with rules and regulations, a quality essential to protecting classified information. *See, e.g.*, ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). The decision is sustainable on this record. *See* 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 E. Moody
James E. Moody
Administrative Judge

¹*See, e.g.*, ISCR Case No. 11-02087 at 2 (App. Bd. Mar. 20, 2012): “[E]ven if a Judge considers an applicant’s testimony to be credible, the Judge still must consider what reasonable inferences and conclusions can be drawn from that testimony.”

²Indeed, we note that Applicant disclosed his delinquent tax returns in his security clearance application, dated June 18, 2014 (Item 3 at 32-33), and discussed them in his clearance interview in July 2014 (Item 4, Interview Summary, at 4). In the interview, Applicant stated that he would hire a CPA and file his returns. However, as the Judge found, he did not do so until nearly a year later, which bears upon his claims that he simply forgot to file them.

Member, Appeal Board