

KEYWORD: Guideline F

DIGEST: The error demonstrated by Applicant was harmless. Adverse decision affirmed.

CASENO: 14-06259.a1

DATE: 06/08/2016

DATE: June 8, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06259
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 1, 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 March 30, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, 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: (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 is a 54-year-old employee of a defense contractor. He has held a security clearance since at least 1986 and has no history of security violations. He has served in a reserve component of the U.S. military.

Applicant admitted that he failed to file his 2010-2012 Federal income tax returns in a timely manner. He denied an allegation that he failed to file his 2013 Federal income tax return because he had filed it. In his security clearance application, he disclosed that he failed to file his 2011 and 2012 income tax returns because he needed "additional time" and expected to file them by February 2014. During a background interview, he explained that he failed to file his 2011 and 2012 income tax returns because he did not have records documenting his claimed charitable contribution and stated he intended to file the delinquent tax returns in April 2014 with his 2013 tax return. With the granting of automatic filing extensions, he was required to file his income tax returns in October of the year following the tax-year in question. He filed his Federal income tax return for 2010 in April 2013 (18 months late), 2011 in April 2014 (18 months late), 2012 in April 2014 (six months late), and 2013 in March 2015 (five months late). He did not owe any past-due taxes, and the Internal Revenue Service (IRS) did not impose any penalty on him.

The Judge's Analysis

The Judge found that Applicant failed to file his Federal income tax returns for 2010-2013 in a timely manner. He noted that Applicant's over-withholding of taxes to avoid owing past-due taxes does not mitigate the judgment concerns raised by a pattern of failing to file in a timely fashion. He found that Applicant did not act responsibly in addressing his taxes, and his tax filing deficiencies were not due to a circumstance beyond his control and undercut his favorable evidence of the absence of security violations. The Judge concluded that Applicant's delinquent filing of the tax returns demonstrated some good-faith effort to satisfy his obligations, but was not enough to overcome the security concerns raised by his conduct.

Discussion

Applicant contends that the Judge did not consider all of the evidence. Specifically, he points to his eventual filing of the income tax returns for the years in question and his history of no security violations. The Judge, however, made findings about those matters. Applicant also asserts that he

“has timely filed tax returns for the last three (3) years,” which we interpret as his tax returns for 2013, 2014, and 2015. In his Answer to the SOR, Applicant submitted an IRS account transcript for 2013 that reflected he filed his Federal income tax return for that year in April 2015, one month later than reflected in the Judge’s findings. This error was harmless and inured to Applicant’s benefit. Applicant has not submitted any basis for challenging the Judge’s finding that his 2013 tax return was filed late, which is based on substantial evidence or constitutes reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). In his Answer to the SOR, Applicant also provided a document showing he transmitted his 2014 Federal and state income tax returns on April 14, 2015. Although the Judge did not make a finding regarding Applicant’s 2014 income tax returns, Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See e.g.*, ISCR Case No. 14-06093 at 3 (Dec. 4, 2015). The record contains no evidence regarding Applicant’s filing of his 2015 income tax returns. His claim that he filed his 2015 income tax returns on time constitutes new evidence, which we cannot consider. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). *See also* ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

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 failed to file his income tax returns in a timely manner for four years supports the Judge’s ultimate conclusion.

The Judge examined the relevant evidence 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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