

KEYWORD: Guideline F

DIGEST: Applicant's arguments fail to rebut the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 11-09118.a1

DATE: 03/25/2015

DATE: March 25, 2015

In Re:)
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-----) ISCR Case No. 11-09118
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Applicant for Security Clearance)
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Todd C. Conormon, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 8, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 17, 2014, after the hearing, 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 issue on appeal: 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 served in the U.S. military for 21 years, retiring as an E-8. He held a security clearance while on active duty. He has worked for a Federal contractor since 1996.

Applicant did not file his Federal or state tax returns from 2001 through 2011. He testified that he had initially believed that he did not owe money, so he procrastinated. In 2002, he received a notice from the IRS that it was going to file his return for him. He called the agency, which informed him that he needed to file his returns. Applicant hired two companies to assist him in resolving his tax problems. However, he testified that they did not provide meaningful help. In 2011 he obtained help from a third tax service and succeeded in filing all of his delinquent returns. Applicant had tax liens from both the Federal Government and the state. These liens were eventually released or canceled.

Applicant claimed that his reason for having failed to file his returns was poor judgment. In addition, his family members suffer from medical problems. For example, his wife and one of his daughters have been diagnosed with paranoid schizophrenia. He has another daughter who is a recovering cocaine addict. In addition, Applicant’s parents had medical problems, requiring him to visit them several times a year. They passed away in 2011 and 2012.

Applicant enjoys a good reputation for trustworthiness and dedication. His job performance is viewed as exemplary. He is held in high regard for his work ethic, honesty, trustworthiness, and dependability.

The Judge’s Analysis

The Judge cleared Applicant for SOR allegations pertaining to Federal and state tax liens. However, she ruled otherwise for the allegations regarding his failure to file his tax returns. She noted his evidence of his family’s medical difficulties. However, she stated that he had long been aware of the Federal and state filing requirements yet did nothing. She concluded that he had not acted responsibly in regard to his financial problems. Citing to the length of time during which Applicant failed to file his returns, she was not able to conclude that the conduct was unlikely to recur. In the whole-person analysis, the Judge cited to Applicant’s military service and the high opinion in which he is held by supervisors and co-workers. She stated, however, that his conduct

was a “consistent non-compliance with one’s civil and legal responsibility.” Decision at 9. She also stated that Applicant’s family problems were not a valid excuse for his tax delinquencies and cited to evidence that Applicant persisted in his failure to file despite having been reminded by the IRS of his obligation to do so.

Discussion

Applicant cites to numerous pieces of record evidence, such as his many years of holding a clearance without incident, the medical problems that his family has experienced, his efforts to obtain assistance in resolving his tax problems, and other things. He argues that he is trustworthy and that his failure to file income tax returns was a result of numerous factors that provide mitigation. His argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-01509 at 2 (App. Bd. Jan. 29, 2015). Neither is Applicant’s argument 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. 14-01669 at 3 (App. Bd. Jan. 29, 2015). Applicant challenges the Judge’s whole-person analysis. After examining the decision in light of the record, we conclude that the Judge complied with the requirements of the Directive in that she considered Applicant’s conduct as a totality. *See, e.g.*, ISCR Case No. 12-01578 at 5 (App. Bd. Sep. 24, 2014).

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board