

KEYWORD: Guideline F

DIGEST: Any error in the Judge’s findings of fact is harmless. Applicant’s failure to file tax returns raised concerns under Guideline F. Adverse decision affirmed.

CASE NO: 14-02718.a1

DATE: 09/28/2015

DATE: September 28, 2015

In Re:	)	
	)	
-----	)	ISCR Case No. 14-02718
	)	
Applicant for Security Clearance	)	
	)	

**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 September 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 30, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 of fact were based upon substantial record evidence and whether the Judge erred in concluding that Applicant’s conduct raised security concerns. Consistent with the following, we affirm.

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

Applicant failed to file Federal or state income tax returns for several years. In his response to the File of Relevant Material (FORM) he advised that, since 1984, he had filed his state tax forms only once, in 2001. In his Response to the SOR, he stated that he had not filed his Federal tax returns for, "at least, tax years 2007 through 2012." Decision at 3. He claimed that his failure to have filed his returns was due to his being overextended at work and letting his house "get way out of control leading to the inability to find tax records." *Id.*

Applicant did not present evidence that he had obtained counseling to assist in the resolution of his delinquent returns. He offered no time-line for filing his returns and submitted no evidence about the quality of his work performance, level of responsibility, or compliance with security procedures. Applicant provided no character evidence.

## **The Judge's Analysis**

The Judge concluded that Applicant had provided insufficient evidence that his tax delinquencies were due to circumstances beyond his control, that his problems were under control, or that he had made a good-faith effort to file his returns. She characterized his conduct as "egregious," and she concluded that his explanation about his work burden lacked credibility. *Id.* at 6.

## **Discussion**

Applicant challenges the Judge's finding that he had submitted no evidence concerning his track record with handling classified information. He cites to his Response to the FORM, in which he discussed his having coordinated the move of a classified computer from one room to another and his having been granted permission to maintain the "end of day" classified container checklist. He also notes his statement in his security clearance application that he has never been denied clearance eligibility. To the extent that the Judge found that Applicant had provided no evidence of any sort relevant to his security compliance, she made an error. However, we note that the record contains no independent evidence that would corroborate Applicant's assertions about this matter. In any event, even if the Judge had noted the things that Applicant has cited in his appeal brief, she would not likely have rendered a different decision. Therefore, any error in her findings is harmless. The Judge's material findings are founded upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

Applicant notes the Judge's quotation from the Directive: "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." *See* Directive, Enclosure 2 ¶ 18. He argues that he is not financially overextended, citing to evidence of his substantial contributions to his church as proof of his solvency. We construe this as an argument that his circumstances do not raise security concerns. The Judge began the Analysis section of the Decision by quoting ¶ 18 in its entirety. The gravamen of the concern under Guideline F is not

simply that an applicant may be tempted to compromise classified information in order to generate funds to pay off debts. It also addresses the extent to which financial problems raise questions about an applicant's self control, judgment, and other qualities essential to protecting classified information. *See, e.g.*, ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). ¶ 19(g) specifically includes an applicant's failure to file tax returns as a condition that could raise a security concern. We find no error in the Judge's conclusions on this matter.

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 E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board