

KEYWORD: Guideline F

DIGEST: Applicant's brief includes new evidence, including information about persons in the news. We cannot consider new evidence. Also, each case must be decided on its own merits. Adverse decision affirmed.

CASENO: 14-04597.a1

DATE: 10/19/2016

DATE: October 19, 2016

In Re:

Applicant for Security Clearance

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) ISCR Case No. 14-04597
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)
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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 December 1, 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 hearing. On July 25, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 failed to consider all of the evidence and whether the Judge failed properly to weigh the evidence. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is divorced from his wife of 20 years. He has five children. Applicant retired from the military in 2004, following which he has worked for several different Government contractors. He has worked at his current job since July 2013 and earns about \$92,000. He first received a clearance in 1982. He was unemployed for a total of 25 months between mid-2007 and mid-2013. When he found employment, he did not ensure sufficient withholding from his salary to pay his income tax obligations. His reason for this was that he needed the extra income to pay other debts, such as child support and his mortgage.

Applicant was unable to pay his Federal tax obligation for 2005 through 2012 and, moreover, did not even file his Federal tax returns, or filed them late. As of the hearing he had yet to file some of his returns. In 2009 he entered into an installment agreement with the IRS but stopped making payments after losing his job. In 2014 he entered into a new agreement and showed that he had made payments of about \$3,000 through July 2014. As of that date, he owed about \$50,700. However, he provided no documentation to show that he had made further payments since then. In addition, Applicant did not file his 2011 state income tax return. He testified that he had since filed the return and paid the tax but did not provide any corroboration.

Applicant also became delinquent in his child support payments and his mortgage. A court increased his child support obligation, which he has paid. He anticipates that this obligation will cease in mid-2016, when his child reaches the age of majority. He has obtained a loan modification, and he is now current on his mortgage. In 2013, Applicant filed for Chapter 13 bankruptcy protection. However, the court dismissed the petition because Applicant failed to attend required financial counseling. He stated that he has since received such counseling but again did not provide corroboration. Applicant’s SOR also lists three consumer debts. Applicant disputes them, and the record shows that he is current on the largest of the three.

Applicant pays about \$600 a month on credit card debt. He claims that he lives frugally. He disclosed his financial problems on his security clearance application.

The Judge’s Analysis

The Judge cleared Applicant for SOR allegations about his mortgage account and the three consumer debts referenced above. However, regarding Applicant's tax problems, he entered adverse findings. The Judge noted Applicant's unemployment, which was beyond his control, but concluded that Applicant had not shown responsible action, citing to his having failed to ensure adequate withholding. Though commending Applicant for satisfying other debts, including his child-support (which was not alleged), he stated that Applicant had been able to do so only by failing to file and pay his taxes. He noted that Applicant began to address his tax delinquencies only at about the same time that his clearance review was initiated. The Judge cited to a paucity of evidence corroborating ongoing payments on his installment agreement with the IRS.

In the whole-person analysis, the Judge acknowledged that Applicant has held a clearance for many years without incident or concern. He cited to evidence of Applicant's 20 years of military service, sometimes in dangerous conditions. He also acknowledged both Applicant's candor in disclosing his financial problems during the course of his clearance investigation and the crippling effect that Applicant's post-divorce obligations exerted on his debts. However, the Judge concluded that these matters did not outweigh a multi-year history of failing to file or pay tax obligations.

Discussion

Much of Applicant's brief consists of matters from outside the record, including information about persons and events in the news. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. In any event, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Applicant cites to evidence that he has held a clearance for many years and that he served honorably in the military. The Judge addressed these matters in his decision. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016). Applicant states that his employment is dependent upon his having a clearance. The Directive does not permit us to consider the impact that an adverse decision might have upon an applicant. *See, e.g.*, ISCR Case No. 14-02619 at 3 (App. Bd. Apr. 7, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). A person who fails repeatedly to fulfill his or her legal obligations, such as filing and paying taxes, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

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 Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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