

KEYWORD: Guideline F

DIGEST: Applicant’s appeal argument consists in essence of 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. 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 systems. Adverse decision affirmed.

CASENO: 14-06686.a1

DATE: 04/27/2016

DATE: April 27, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06686
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher N. Davis, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 10, 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 hearing. On February 19, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Roger C. Wesley 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 erred in his application of the pertinent mitigating conditions. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been employed by a Defense contractor since 2008, and between 2006 and 2010 he worked part-time for another company. He has been employed steadily since 1998. In 1999, Applicant filed for Chapter 7 bankruptcy protection as a result of a failed business that he and his wife had operated. Applicant provided no documentary evidence concerning this matter.

Applicant has both Federal and state liens for tax delinquencies that go back to 2006. These liens had not been resolved as of the close of the record. Applicant has made no voluntary payments on either of these liens, although the IRS has garnished his wages. By the close of the hearing, Applicant's debt to the IRS exceeded \$60,000. He has a monthly remainder of \$2,300 left over after expenses.

In early 2015, Applicant retained a law firm to assist him in resolving his tax problems. The Judge gave him additional time after the close of the hearing to provide evidence of progress. Applicant's attorney provided a letter to the effect that Applicant had been proactive in addressing his tax debts but included no information about the nature or extent of negotiations with the IRS or with state authorities.

Applicant enjoys an excellent reputation for the quality of his work performance. He is considered to be honest, and his colleagues believe that he will resolve his tax problems.

The Judge's Analysis

The Judge noted that there was a paucity of evidence to show that Applicant was addressing his tax problems, beyond the letter by the attorney to the effect that he was being proactive. The Judge stated that the failed business was a circumstance beyond Applicant's control that led to his bankruptcy but commented that, without more detailed evidence, he could not draw conclusions about Applicant's taxes. In the whole-person analysis, the Judge noted Applicant's having hired an attorney to assist him in resolving his liens. He also noted Applicant's character references. However, he concluded that this favorable evidence was not sufficient to overcome the security concerns raised by Applicant's failure to pay his taxes.

Discussion

Applicant's appeal brief includes a substantial amount of evidence from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant argues that the Judge should have found his security concerns mitigated. This argument consists in essence of 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. 14-06440 at 4 (App. Bd. Jan. 8, 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 systems. Voluntary compliance with rules and systems is essential for protecting classified information. *See, e.g.*, ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). Evidence that Applicant has had tax delinquencies for many years that he failed to address by the close of the record supports the Judge's ultimate conclusion.

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

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

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