

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s decision focused to a large extent on evidence that his taxes remained delinquent for several years and were not addressed until Applicant received the SOR. As we have noted previously, timing of debt payments is relevant in evaluating an applicant’s case for mitigation. It also focused on established precedent about the adverse significance of an applicant’s failure to file and pay his taxes. As we have noted previously, a person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. Adverse decision affirmed.

CASENO: 14-06808.a1

DATE: 11/23/2016

DATE: November 23, 2016

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| ----- |) | ISCR Case No. 14-06808 |
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| 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 2, 2015, 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 August 29, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Applicant’s SOR includes numerous delinquent debts. He has experienced unemployment, during the mid-2000s and again in June through October 2012. His financial difficulties were also affected by his domestic partner’s inability to find steady employment. He began experiencing financial problems in 2007 and instructed his employer to stop withholding taxes from his income. Applicant failed to file and/or pay his Federal and state taxes for several years. He completed his Federal return for 2009 in April 2010 and his returns for 2010 through 2012 in late 2015. He filed his 2013 returns electronically in late 2015. Applicant has sought a repayment plan with the IRS to make payments of \$80 a month, but the offer has not been accepted as of early 2016. Applicant completed delinquent state tax returns for 2009 through 2012 in early 2016.

Applicant acknowledged that it was mere “stupidity” on his part to have failed to file his tax returns. Directive at 7. He promised to comply with tax filing obligations in the future. Applicant enjoys a good reputation for the quality of his work performance as well as for honesty and trustworthiness.

The Judge’s Analysis

The Judge cleared Applicant of most of the debts alleged in the SOR. She entered adverse findings for three debts, one of which had been reduced to judgment. The gravamen of her analysis was Applicant’s failure to have filed and paid his Federal and state income taxes. She noted circumstances outside his control that harmed his finances, such as unemployment. However, she also noted his diminished tax withholding, which was his own decision. She stated that Applicant has no confirmed installment plan to repay his delinquent taxes. She also stated that Applicant had been on notice of these back taxes at least since his 2013 clearance interview but had only recently

undertaken corrective action. She concluded that the timing of Applicant’s tax filing—after receipt of the SOR—diminishes the weight to which this action was entitled.

Discussion

Applicant’s brief contains matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He cites to his evidence about his proposed installment plans and contends that he has mitigated the concerns arising from his tax delinquencies. The Judge’s decision focused to a large extent on evidence that his taxes remained delinquent for several years and were not addressed until Applicant received the SOR. *See, e.g.*, ISCR Case No. 14-01243 at 3 (App. Bd. Jun. 18, 2015) (Timing of debt payments is relevant in evaluating an applicant’s case for mitigation). It also focused on established precedent about the adverse significance of an applicant’s failure to file and pay his taxes. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). (A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that she mis-weighed the evidence. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016).

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

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