

KEYWORD: Guideline F; Guideline E

DIGEST: A person who repeatedly fails to fulfill legal obligations does not demonstrate the degree of reliability expected of those with access to classified information. A Judge has no authority to serve as an investigator in a case. A Judge is presumed to have considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 15-03458.a1

DATE: 12/08/2016

DATE: December 8, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-03458
)	
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 November 24, 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 26, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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, who is 59 year old, has worked for a government contractor since October 2013. He is divorced and has a minor son. He attributed his Federal and state tax problems to his depression, his mother passing away in 2006, his wife cheating on him in 2007, an accident at work that cause him to be disabled in 2008, surgery for that injury in 2009, separation from his wife in 2009, and their divorce in 2011.

Applicant failed to file his Federal income tax returns for 2009-2012 as required by law. He filed those tax returns between March 2014 and May 2014. In 2010, a Federal tax lien in the approximate amount of \$10,000 was filed against him. He owes about \$32,000 in delinquent taxes for 2000, 2002, 2003, 2009, 2010, 2011, and 2012. He entered into an installment agreement with the IRS to resolve the delinquent taxes and has made monthly payments of \$50 since August 2015.

Applicant failed to file his state income tax returns for 2004 and 2008-2012 as required by law. He presented unsigned and undated state tax filings for 2008-2012 and no documentation for 2004. He testified that all of the delinquent state tax returns were filed in 2014, but did not substantiate that claim. In 2012, a state tax lien in the approximate amount of \$2,400 was filed against him. He testified that he resolved the tax lien though monthly payments. The lien was released in January 2016.

The SOR also alleged that Applicant was indebted on two collection accounts totaling about \$1,100. A credit report reflects these accounts have been in collection since March 2009. Applicant verbally requested documentation from collection agents to substantiate the debts, but was never provided such information. He testified the credit report entries could be in error, because the reports contain an out-of-state address at which he never lived. He failed to present documentation to substantiate that he had a legitimate basis for disputing these debts. These debts no longer appear on his credit report.

In October 2013, Applicant submitted a security clearance application (SCA). In doing so, he encountered computer difficulties, was unable to print the SCA to review it, and was instructed that he could clarify matters during his background interview. In the SCA, he responded "No" to the question that asked, if in the past seven years, whether he failed to file or pay Federal, state, or other taxes when required by law or ordinance, but did note "Extension filed, taxes currently being processed." He also responded "No" to questions that asked, if in the past seven years, whether he defaulted on any type of loan; whether he had any bills or debts turned over to a collection agency; whether he had any account or credit card suspended, charged-off, or cancelled for failing to pay as agreed; and whether he was currently 120 days delinquent on any debt. He offered several explanations for his answers to the tax question on the SCA, including that he "clicked the wrong box." Decision at 5. Contrary to his contention, his credit reports demonstrated the two collection

accounts were not outside the seven-year reporting requirement. His explanations for his responses to the above questions were not credible.

Applicant presented three letters of recommendation and the signatures of 33 coworker who attest that he is trustworthy and responsible. He testified that he is able to meet his monthly expenses and has about \$200 to \$300 in discretionary income each month. His credit reports reflect no new delinquent debts.

The Judge's Analysis

The Judge noted that Applicant's failure to file his Federal income tax returns until after meeting the Office of Personnel Management investigator suggests his questionable judgment persists. While he testified that he filed his delinquent state tax returns, he did not present sufficient documentation to substantiate his claim. The Judge found in favor of Applicant on the resolved state tax lien. He did not present sufficient evidence to establish his two collection accounts have been resolved. He failed to demonstrate that future financial problems are unlikely. Although he attributed his financial problems to events beyond his control, he failed to demonstrate responsible behavior concerning his debts after 2011. His efforts to repay the delinquencies are minimal, untimely, and do not establish responsible action under the circumstances.

On his SCA, Applicant deliberately failed to disclose his delinquent debts and his failure to file and pay taxes as required by law. He did not make a prompt and good-faith effort to correct his falsification. While he said that his human resources office told him he could clarify matters during the background interview, that advice does not explain why he presented false information with respect to his taxes. He failed to take responsibility for his actions.

Discussion

In his appeal brief, Applicant submits various arguments challenging the Judge's adverse decision. For example, he argues that he filed his delinquent Federal tax returns and entered into an installment agreement for his Federal tax debt. However, the Judge's decision noted that his taxes remained delinquent for several years and were not filed until after his security clearance background interview. *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). The decision 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). In essence, the majority of Applicant's arguments are 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. 14-06634 at 2 (App. Bd. Apr. 28, 2016).

Applicant contends that he filed his delinquent state tax returns. A review of the record, however, supports the Judge's determination that Applicant did not substantiate that he filed his state

tax returns for 2008-2012 in 2014 because the copies of those tax returns offered into evidence were unsigned and undated. While he also argues that he signed a release so that information about the filing of his state tax returns could be obtained, he had the burden of presenting evidence in rebuttal, extenuation, and mitigation. Directive ¶ E3.1.15. Furthermore, a Judge is an impartial fact-finder and has no authority to serve as an investigator in a case, which would be inconsistent with her role as an independent fact finder. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

Applicant further argues that the Judge's characterization of his Federal installment payments as "minimal" was unfair because he was paying the amount the IRS recommended based on his income and household expenses. Considering the amount of past-due Federal taxes owed and the amount of the installment payments, we find no error in the Judge's characterization of those payments. Even if the Judge had not used that term, it is unlikely that she would have reached a different conclusion.

Applicant challenges the Judge's determination that he falsified his SCA. He points out that he did not have adequate financial information when he was filling out his SCA, noted in the SCA that he was in the process of filing his tax returns, and disclosed information about his delinquent tax returns in his background interview. The Judge made findings of fact about those matters. She also found that he offered several different explanations for his response to the tax question on the SCA and noted he contacted both his state and Federal taxing authorities about his unpaid and unfiled tax returns in July 2013, about three months before completing his SCA. She concluded that he clearly was aware that he owed both state and Federal unpaid taxes when he completed his SCA. In evaluating whether his SCA responses were deliberate omissions, the Judge considered his omissions in light of the record as a whole. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). We find no error in the Judge's falsification findings.

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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