

KEYWORD: Guideline F

DIGEST: Applicant points to evidence that he has resolved most of the SOR debts, including a tax lien. He argues that he “has taken substantial steps to resolve” his remaining tax debts. Applicant’s argument is not enough to rebut the presumption that the Judge failed to consider all of the evidence in the record or to show that he mis-weighed the evidence. Applicant has cited to Hearing Office cases that, he contends, support his effort to obtain a clearance. We give these cases due consideration. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASENO: 15-04096.a1

DATE: 11/22/2016

DATE: November 22, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-04096
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 22, 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 August 31, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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

The Judge made the following findings pertinent to the issue raised on appeal: Applicant has been employed by a Defense contractor since 2014. He experienced periods of unemployment between 2008 and 2014. Applicant’s SOR includes two tax liens.¹ One was filed in May 2011 in the amount over \$62,000 covering tax years 2001 through 2006. The other was filed in October 2011 for nearly \$19,000 covering tax years 2008 through 2010. Applicant provided financial support to family members rather than pay taxes. He has been making payments on his tax debts since 2011. He has submitted offers in compromise to the IRS and believes that, if they are accepted, he can resolve his tax liabilities in a year or more. He has timely filed his returns since 2010. Applicant has resolved, or successfully disputed, other debts alleged in the SOR, for such things as medical expenses, telecommunications services, child support, etc.

The Judge’s Analysis

The Judge cleared Applicant of all SOR allegations except the two tax liens described above. Though noting that Applicant had presented some mitigating information, the Judge cited to evidence that Applicant has owed taxes to the Federal Government for many years. He stated that Applicant’s history of failing to pay taxes when due raises unresolved security concerns. Evidence that Applicant had provided some financial support to family members was not enough fully to mitigate the security concerns arising from his tax delinquencies.

Discussion

Applicant points to evidence that he has resolved most of the SOR debts, including a tax lien. *See* footnote 1, *supra*. He argues that he “has taken substantial steps to resolve” his remaining tax debts. Applicant’s argument is not enough to rebut the presumption that the Judge failed to consider all of the evidence in the record or to show that he mis-weighed the evidence. *See, e.g.*, ISCR Case No. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016). Applicant has cited to some Hearing Office cases

¹The SOR alleged another tax lien that the Judge resolved in Applicant’s favor.

that, he contends, support his effort to obtain a clearance. We give these cases due consideration. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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). Failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and regulations. Voluntary compliance with such rules and regulations is essential for protecting classified information. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016). 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board