

KEYWORD: Guideline F

DIGEST: We cannot consider new evidence on appeal. Applicant did not rebut the presumption that the Judge considered all of the evidence. The Judge’s material findings are supported by substantial evidence. Adverse decision affirmed.

CASE N O: 14-06105

DATE: 03/07/2017

DATE: March 7, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 14–06105
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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 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 28, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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

56 years old, Applicant works for a Defense contractor, having previously served in the military from 1983 until 1992. He is divorced with three children. Applicant failed to file his Federal income tax returns from 2006 through 2013. He disclosed these failures in his 2008 and 2014 security clearance applications (SCA) and discussed them in his interviews. Applicant attributed his delinquent filings to laziness and because "I do have a problem filing tax returns[.]" Decision at 2, quoting Tr. at 35. He did not worry about this matter, because he was entitled to refunds. Applicant hired a tax professional to prepare his returns, and he filed them in 2016. He did so after the SOR placed him on notice that his clearance was in jeopardy. The IRS filed Applicant's returns for 2006 through 2008. He overpaid his taxes for all years in question, except 2010, when he owed a little over \$300. Applicant stated that he would file his returns in the future.

The Judge's Analysis

The Judge stated that Applicant failed to present evidence of circumstances beyond his control that impaired his ability to file his tax returns. To the contrary, he attributed his failure to laziness and his preference for the IRS to file for him. Although Applicant has now filed his delinquent tax returns, the Judge found little reason to conclude that Applicant would comply with the law in the future. He stated that there are no clear indications that Applicant's problems are behind him. Though noting Applicant's military service and work for a Federal contractor, the Judge concluded that Applicant had not established a track record of financial responsibility.

Discussion

Applicant's appeal brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He notes that he fully disclosed his filing delinquencies in his 2008 SCA and during the subsequent interview and that authorities granted him a clearance anyway. He argues that he interpreted this favorable result to mean that filing delinquencies were not an impediment to holding a clearance. He also cites to his military service and to his work as for a contractor. He states that he is embarrassed by his security-significant conduct.

The Judge made findings about Applicant's disclosure of his delinquencies, as well as about his military service and civilian career. Applicant's brief cites to no extenuating evidence in the file that the Judge failed to address. Applicant has not rebutted the presumption that the Judge considered of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). The Judge observed that Applicant's earlier adjudication should have placed him on notice of the importance of filing his tax returns in a timely manner. This was a reasonable conclusion from the evidence that was before him. Applicant has not 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 “the government representative inferred that I do not pay my taxes.” Appeal Brief at 1. He is apparently referring to a question by Department Counsel about “any other delinquent debts.” Applicant replied that his Federal taxes themselves were not delinquent, and Department Counsel agreed. Tr. at 35. There is nothing in this colloquy that would have misled the Judge about the true nature of Applicant’s security-significant conduct or that resulted in any erroneous finding of fact. Indeed, the Judge found that Applicant was entitled to refunds for all of the years in question except 2010, when he owed a nominal amount, which was consistent with Applicant’s testimony at the hearing. Tr. at 33. The Judge’s material findings are supported by substantial evidence. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case 14-06808 at 2 (App. Bd. Nov. 23, 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board