

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge's treatment of the allegations constitutes a reasonable interpretation of the record. Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence, which is not enough to show harmful error. Adverse decision affirmed.

CASENO: 14-06948.a1

DATE: 03/28/2017

DATE: March 28, 2017

In Re:)	
)	
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)	ISCR Case No. 14-06948
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Molly Schmidt-Nowara, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 28, 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 October 25, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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. Department Counsel withdrew the Guideline E allegation at the beginning of the hearing. Accordingly, it is not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has worked for a Defense contractor since 2014. He previously held a clearance from 2008 through 2014. His SOR alleged concerns regarding a state tax lien; failure to file Federal income tax returns; delinquent Federal taxes; and a past-due mortgage loan. Applicant’s Federal tax issues formed the basis of the Judge’s adverse decision. Applicant attributed them to complex circumstances surrounding the interplay of corporate and personal tax obligations and to his having hired several accountants who failed to perform as agreed. Applicant admitted that he failed to file Federal returns for 2005 through 2012. After contacting the IRS himself, he filed for 2010 through 2015. In addition, he owes the IRS an estimated \$42,000 in back taxes. He did not provide evidence from the IRS as to the amount he owes.

The Judge’s Analysis

The Judge cleared Applicant for the state tax lien, which he had resolved, and the mortgage. He concluded that Applicant had demonstrated a reasonable basis to dispute the mortgage debt. However, he resolved the allegations of failure to file and pay Federal income taxes adversely to Applicant. He noted that Applicant had undertaken efforts to resolve his tax problems and that his difficulties were affected by circumstances outside his control, such as the malfeasance of his accountants. Nevertheless, he concluded that Applicant’s efforts were not sufficient to overcome concerns arising from many years of neglect or procrastination.

Discussion

Applicant argues that his conduct regarding his tax problems is not qualitatively different from that underlying the allegations that the Judge resolved in his favor. He argues that, as a consequence, the adverse decision regarding the tax delinquencies is arbitrary, capricious, and contrary to law. However, it is within a Judge’s discretion to conclude that an applicant has mitigated some of the allegations against him but not others. So long as the Judge has articulated a reasonable basis for his or her conclusions, we will not disturb them on appeal. *See, e.g.*, ISCR Case No. 14-03747 at 2 (App. Bd. Nov. 13, 2015). In this case, the Judge’s treatment of the various

allegations constitutes a reasonable interpretation of the record that was before him. Applicant's argument amounts to a disagreement with the Judge's weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

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 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