

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge made finding about most of the matters cited in Applicant’s appeal brief. Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 15-02935.a1

DATE: 06/05/2017

DATE: June 5, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-02935
---	---------------------------------	------------------------

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 31, 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 March 23, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 is a 48-year-old employee of a defense contractor. The SOR alleged, and the Government's exhibits proved, that Applicant failed to file in a timely manner his Federal income tax returns for 2010-2012 and 2014 and his state tax returns for 2010-2014. He failed to disclose his tax issues on his 2012 security clearance application (SCA). He attributed the non-disclosure to overlooking the word "filed" in the SCA question.

Applicant filed his 2010-2012 Federal tax returns at the end of April 2013 and his 2014 Federal tax return in December 2015. He thought he had filed his 2010 state tax return, but was mistaken. He did not file his 2010-2014 state tax returns until October 2015. He filed early his Federal and state tax returns for 2015. He acknowledged that some of his tax filing problems were organizational.

The Judge's Analysis

The Judge found in favor of Applicant on the Guideline E falsification allegation and against him on the two Guideline F allegations addressing his failure to file his Federal and state income tax returns in a timely manner. Applicant has no outstanding Federal or state tax liability for the years in question. The failure to file was deliberate. He mostly disregarded these tax obligations for several years. The Judge concluded that judgment issues raised by his failure to file his income tax returns in a timely manner remain unmitigated.

Discussion

Applicant contends that the Judge did not consider or properly weigh all relevant evidence. In doing so, he argues that he filed his tax returns and paid his taxes and that the Judge engaged in a fragmented and piecemeal analysis. His arguments are not persuasive. The Judge made findings about most of the matters cited in Applicant's appeal brief. Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *Id.*

We give due consideration to the Hearing Office case that Applicant cited in the appeal, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). We further conclude the Judge

considered the totality of the evidence in compliance with the whole-person analysis requirements. See Directive, Enclosure 2 ¶ 2.

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 and paying taxes 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 No. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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: William S. Fields
William S. Fields
Administrative Judge
Member, 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