

arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant failed to file his state income tax returns for 2012 and 2013. He filed his 2012 return in 2015 and his 2013 return in 2016. Applicant paid about \$55 in satisfaction of his 2012 tax delinquency and \$6 toward satisfying his \$76 delinquency for 2013. Applicant made inconsistent statements about his reason for having failed to file and pay his taxes. In his security clearance application, he stated that he had forgot. In his security clearance interview, he stated that he had not filed his 2012 return because he did not have the funds. In his Answer to the SOR, he attributed his failures to file to oversight. He also stated that he thought he had filed his 2013 return until he had received “notification” that he confirmed with the state taxing authorities. Decision at 3. Applicant took exception to Department Counsel’s argument that he had resolved his tax problems only because he was undergoing a renewal of his clearance. He stated that he resolved his tax problems because he understood his obligation to do so.

The Judge's Analysis

The Judge concluded that Applicant’s tax delinquencies raised concerns under Guideline F. He also concluded that Applicant had not mitigated those concerns. He noted prior Appeal Board decisions to the effect that failure to file and pay taxes when due impugns an applicant’s judgment and reliability. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016), which the Judge cited. He stated that Applicant’s “varying explanations for failing to file his state taxes did not enhance his position.” Decision at 7. He concluded that Applicant knew of his duty to file and pay his taxes, which detracted from his effort to explain his conduct. The Judge also observed that Applicant had waited for several years to file his returns, which detracted from Applicant’s favorable evidence.

Discussion

Applicant contends that the Judge failed properly to apply the mitigating conditions and the whole-person factors. He cites to his clean disciplinary record, his years of holding a security clearance without incident, his community involvement, etc. He argues that the Judge failed to consider this evidence, applying instead a “strict liability” approach to Applicant’s tax problem.

A Judge is required to consider the entirety of the record evidence, which is the essence of the whole-person concept. *See, e.g.*, ISCR Case No. 14-06653 at 3 (App. Bd. Nov. 18, 2016). A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). A Judge is not required to discuss every piece of evidence, however, which would be nearly impossible. *See, e.g.*, ISCR Case No. 14-05396 at 4 (App. Bd. Jan. 10, 2017). Our reading of the case file provides no reason to conclude that the Judge failed in his responsibility to consider the entirety of the evidence. The Judge cited to favorable evidence, such as Applicant’s family circumstances, his education, and his years of working for a Defense contractor. However, as he noted in the Analysis portion of the Decision, failure to file tax returns and pay taxes when due suggest that an applicant has difficulty complying with rules and

regulations. This, in turn, raises a reasonable concern that the applicant may decline to follow other rules, such as those governing access to classified information. In a DOHA proceeding, it is the applicant who must bear the burden of persuasion as to mitigation of the concerns raised by the SOR and evidenced in the file. Directive ¶ E3.1.15. Given Applicant’s inconsistent explanations for his security-significant conduct, we find no reason to disturb the Judge’s conclusion that Applicant had failed to meet his burden. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record or that he failed properly to weigh that evidence. ISCR Case No. 13-00502 at 3, *supra*. We find no reason to conclude that the Judge failed properly to evaluate Applicant’s case for mitigation in light of the whole-person concept.

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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