

KEYWORD: Guideline F

DIGEST: Applicant failed to timely file his Federal income tax returns for 2009 and 2010. He has an outstanding tax lien against him by his state. Adverse decision affirmed.

CASENO: 15-05158.a1

DATE: 08/17/2017

DATE: August 17, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-05158
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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 March 7, 2016, 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 decision on the written record. On May 31, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Kilmartin 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 retired from the military in 2001 and obtained a college degree in 2006. He has worked for a Federal contractor since 2010. Later that same year, Applicant was discharged in Chapter 7 bankruptcy.

Applicant failed to timely file his Federal income tax returns for 2009 and 2010. He has an outstanding tax lien against him by his state. Applicant first disclosed his Federal filing delinquencies on his 2012 security clearance application (SCA). In a subsequent clearance interview, he expressed optimism that his returns would be filed and taxes paid soon. In his 2014 SCA, he stated that he was working to file his returns and pay his taxes. In the clearance interview, he stated that he had started a payment plan to resolve his 2009 taxes and expected to have them paid by 2015. He admitted that he had not yet filed his 2010 Federal returns. In his response to the SOR, he advised that he had filed Federal returns for 2009 and 2010 and was working on a plan to address a tax debt to the IRS. He also stated that he owed his state over \$4,000 for taxes due in 2014.

Applicant attributed his tax delinquencies to a failed business. He mortgaged his home and used credit cards to invest in what turned out to be a Ponzi scheme. He failed to produce corroborating evidence of this scheme or documentary proof that he had filed his returns, entered into payment plans, or paid the taxes in question.

The Judge's Analysis

The Judge noted Applicant's claims to have filed his tax returns. However, he also noted that Applicant did not provide documentary proof that he had done so or that he had paid delinquent taxes. The Judge cited to Applicant's military career and his claims to have been defrauded through the failed business venture. However, he concluded that Applicant's finances remain a security concern.

Discussion

Applicant's brief includes reference to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant contends that the Decision relies on outdated information. He states that there was no method for him to provide updates to the Judge since April 2016, "unless I was requested to provide such, which request was never received by me." Appeal Brief at 1.

The record shows that DOHA sent Applicant a copy of the File of Relevant Material (FORM) on June 20, 2016. The FORM was accompanied by a cover letter of the same date that notified Applicant of his right to provide a documentary response that could consist of "any material you wish the Administrative Judge to consider[.]" The record shows that Applicant acknowledged receipt of the FORM and cover letter on July 11, 2016. Despite this, Applicant did not make a documentary response to the FORM. There is nothing in the record to show that Applicant actually sought to supplement the FORM with more up-to-date information, nor does Applicant contend in his Appeal Brief that he submitted documents that did not make it into the record. The record demonstrates that Applicant received adequate notice of his right to provide a response to the

FORM. His failure to have done so cannot be attributed to DOHA.

Beyond this, Applicant cites to efforts he had undertaken to resolve his tax problems. Applicant has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08842 at 3 (App. Bd. Feb. 14, 2017). 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board