

KEYWORD: Guideline F

DIGEST: Applicant contends that his circumstances do not raise disqualifying condition 19(c) arguing that he does not have a history of not meeting financial obligations. We resolve this issue adversely to Applicant. Failure to have filed, and in some instances failure to have paid, income taxes over a course of several years constitutes a history within the meaning of the Directive. Adverse decision affirmed.

CASENO: 15-06731.a1

DATE: 12/6/2017

DATE: December 6, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-06731
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Gatha Manns, Department Counsel

FOR APPLICANT

Jeffrey D. Billett, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 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 hearing. On August 9, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge LeRoy F. Foreman 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 53 year-old. He retired from the military in 2008 and has worked for Defense contractors since. His military career included assignments in acquisition. He held a clearance while in the military and retained it during his subsequent civilian employment. He has a master's degree that he completed in 2015.

Applicant and his wife separated in 2007, divorcing three years later. During the marriage, Applicant depended on his wife to file important documents. After moving out of the marital home, Applicant became increasingly disorganized and misplaced his tax documents. He failed to file Federal and state income tax returns for 2011 and for the years following. He stated that he became busy with family responsibilities, college courses, and church activities. He hired a tax preparer in 2015, who filed his returns for him in March of that year. The IRS had notified him that his returns had not been filed, but he waited a year to contact a preparer. Applicant was entitled to refunds for some years but owed money for others. He has paid his tax debts.

Applicant enjoys an excellent reputation for the quality of his work performance as well as for his honesty, reliability, and trustworthiness. His performance appraisals for 2012 through 2015 rate him as exceeding standards.

The Judge's Analysis

The Judge concluded that Applicant's tax filing delinquencies raised two disqualifying conditions: 19(c) and 19(f).¹ In evaluating Applicant's case for mitigation, the Judge stated that he had not demonstrated a sufficient track record of tax compliance. Though noting Applicant's marital problem, which was beyond his control, the Judge found that Applicant had not demonstrated responsible action in regard to his debts. He did note that Applicant had established two mitigating conditions, 20(c) and 20(g),² citing to evidence that Applicant had hired a tax preparer and had filed his returns and paid past-due tax obligations.

¹Directive, Encl. 2, App. A ¶ 19(c): "a history of not meeting financial obligations;" and ¶ 19(f): "failure to file . . . annual Federal, state, or local income tax returns[.]"

²Directive, Encl. 2, App. A ¶ 20(c): "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control;" and ¶ 20(g): "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements."

In the whole-person analysis, the Judge stated that Applicant was credible in his hearing presentation and that he was remorseful. However, he also stated that Applicant is mature and well-educated and that his experience in Federal acquisition should have placed him on notice of his duty to comply with well-established rules and regulations. He found that Applicant's repeated failure to have filed his returns suggests a lack of responsibility.

Discussion

Applicant cites to record evidence that he contends the Judge did not consider, thereby impairing the sufficiency of the Judge's findings of fact. After considering Applicant's brief in its entirety, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-08688 at 3 (App. Bd. Nov. 6, 2017). The Judge's material findings are supported by substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant contends that his circumstances do not raise disqualifying condition 19(c), arguing that he does not have a history of not meeting financial obligations. We resolve this issue adversely to Applicant. Failure to have filed, and in some instances failure to have paid, income taxes over a course of several years constitutes a history within the meaning of the Directive. Even if the Judge had not addressed this condition, however, his overall decision would have been the same, given the clear applicability of 19(f).³ In any event, the Directive presumes a nexus between proved conduct under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-06050 at 2 (App. Bd. Oct. 30, 2017). Under the facts of this case, the Judge did not err in the manner in which he analyzed Applicant's security concerns.

Applicant notes that the Judge found two mitigating conditions to have been "established" yet rendered an adverse decision anyway. He argues that the Judge failed to explain why, if these conditions were established, he did not arrive at a favorable result. However, it is not inconsistent for a Judge to find that one or more mitigating conditions apply to an applicant's case yet determine that, under the facts of the case, the conditions are not enough to outweigh the concerns raised by the applicant's security-significant conduct. Given Applicant's education and experience, which includes military acquisition; the multi-year nature of his delinquencies; and his failure to have provided a plausible excuse for his failures, we find no deficiency in the Judge's analysis, nor do we conclude that Applicant has shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08688 at 3, *supra*.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, as to both the mitigating conditions and the whole-person factors. Failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules

³Applicant also contends that the Judge's decision to apply two disqualifying conditions in this case renders his analysis multiplicitous. Multiplicity is a doctrine applicable in criminal law, not in a security clearance decision. In any event, the pleading in Applicant's case—the SOR—contains only one allegation. It does not impermissibly multiply the security concerns contained in Applicant's tax delinquencies or otherwise make his problems appear to be more serious than they are.

and regulations, voluntary compliance with which is essential to protecting classified information. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 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, 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