

KEYWORD: Guideline F; Guideline J

DIGEST: Applicant’s brief includes new evidence, which we cannot consider. Otherwise, it constitutes a challenge to the Judge’s weighing of the evidence. However, an ability to argue for a different interpretation of the evidence is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-07654.a1

DATE: 10/25/2017

DATE: October 25, 2017

In Re: _____ Applicant for Security Clearance)))))))	ISCR Case No. 15-07654
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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 September 6, 2016, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 7, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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. The Judge's favorable findings under Guideline J are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the military from 1986 to 1996, rising to the grade of E-4. He later attended college, graduating *summa cum laude*. Divorced in 2005, Applicant has four adult children. In 2009 or 2010, Applicant worked for the Federal Government, during which time he was injured on the job. He did not receive income for about six months due to this injury. From 2011 until 2015 Applicant was unemployed, although he received partial disability payments from the Government. These payments were reduced in 2015.

Applicant's SOR alleged that he failed to file and/or pay his Federal and state income tax returns for several years in the 2000s. In addition, during the same time period, he did not file in a timely manner several state income tax returns that were not alleged in the SOR, although the Judge considered them for purposes such as Applicant's case for mitigation, his credibility, the whole-person analysis, etc. Applicant has filed Federal income tax returns for most of the years at issue here, and his attorney is working on filing those for his state. Applicant has two Federal tax liens regarding his total IRS debt of about \$53,000. Applicant stated that the IRS had agreed to settle this account for \$6,000. He initially stated that he would send payment within 90 days but then asserted that the IRS would need that much time in which to complete the settlement.

Applicant attributed his tax problems to his ex-spouse having claimed their children as dependents on her returns. As a consequence, Applicant fell into a "spiral" in which he was unable to pay his tax obligation. Decision at 4. Applicant has other debts, such as a judgment in the amount of about \$1,100 and collection accounts that total a little over \$2,000.

The Judge's Analysis

The Judge cited to Applicant's unemployment, divorce, and disability. He stated, however, that Applicant had begun mishandling his income taxes before these circumstances arose. The Judge noted that Applicant had not demonstrated that he had settled his debts or paid amounts owed. He cited to Appeal Board precedent to the effect that, even if an applicant has paid or resolved certain debts, a Judge may consider the factors underlying those debts for what they may reveal about the applicant's eligibility for a clearance. The Judge stated that there is insufficient evidence explaining why Applicant was unable to make greater progress in resolving his tax issues.

In the whole-person analysis, the Judge noted Applicant's educational attainment; his military service, which included tours of duty overseas; and his character evidence. However, he concluded that the evidence against granting a clearance was more substantial. He cited to Applicant's failure to have filed his returns for many years and a paucity of evidence corroborating his claims of debt resolution. He stated that more documentation is necessary in order to establish mitigation.

Discussion

Applicant's brief includes new evidence, which we cannot consider. Directive ¶ E3.1.29. Otherwise, it constitutes a challenge to the Judge's weighing of the evidence. However, an ability to argue for a different interpretation of the evidence is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08711 at 3 (App. Bd. Aug. 24, 2017).

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. 15-06707 at 3 (App. Bd. Aug. 15, 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, 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