

Applicant raised the following issues on appeal: whether the Judge disregard significant record evidence and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 46-year-old independent contractor who seeks to perform business with defense contractors. The SOR alleged that Applicant failed to file his Federal and state income tax returns for 2007 through 2014 in a timely manner and had a Federal tax lien for over \$38,000 filed against him in 2010.¹

In his SOR response, Applicant admitted he failed to file his Federal and state tax returns for the years in question. He attributed those tax filing deficiencies to poor record keeping and lack of structure to keep track of business expenses. In 2014 and 2015, he hired an accountant who has helped him organize his records. His delinquent tax returns were filed in August 2016.

In his SOR response, Applicant denied the Federal tax lien. The lien was for unpaid taxes in 2001, 2006, and 2007. In October 2016, he set up a plan to make monthly payments of \$750 to the IRS and provided proof that he made three payments under the plan. The Federal tax lien was released in early 2017. The total amount of his unpaid Federal taxes was not disclosed in the record. He owes no Federal taxes for 2007-2011, but owes about \$54,000 for 2012, \$18,000 for 2013, \$12,000 for 2014, and \$14,000 for 2015. He plans to take out a home equity loan to resolve his tax debt. He earns about \$230,000 per year and lists assets over \$1,800,000.

The Judge's Analysis

Applicant has a long history of unwillingness to satisfy his Federal and state tax obligations. He waited until after receipt of the SOR to file his income tax returns and to start payments on his Federal taxes. "While his recent efforts to rectify his Federal and state taxes are notable, his failure to comply with legal obligations for years casts doubt on his current judgment." Decision at 6.

Discussion

Applicant contends that the Judge did not mention a "\$90,000 tax credit" reflected on his 2010 IRS tax transcript. The Judge, however, entered a finding that Applicant made an estimated tax payment of \$94,000 for 2010. Decision at 3. His 2010 tax transcript reflects in two entries that a payment of \$94,000 was made on a specific date, and each of those entries is followed by an entry indicating a payment of that amount was "removed." Applicant's Exhibit (AE) R. The 2010 tax transcript does not indicate that the \$94,000 payment was applied to taxes for any other year. Applicant also argues that the \$90,000 payment eliminated most of his subsequent tax liabilities for 2012 through 2015, and he owes about \$9,000 for 2015. The tax transcripts for 2012 through 2015, however, do not support that argument. His 2011 tax transcript indicated he had a credit in his

¹ In separate allegations, the SOR alleged that Applicant failed to file state income tax returns in two different states for 2007-2014. The Judge found in favor of Applicant on one of those allegations and against him on the other. The favorable finding is not an issue in this appeal and is not discussed further.

“account balance” of about \$6,000, but the tax transcripts for the following years indicate that, as of late 2016 or early 2017, he owed tax deficiencies as the Judge stated in her findings of fact. We also note that Applicant’s appeal brief argument contradicts his testimony that he owed the IRS about \$50,000 to \$60,000 at the time of the hearing. Tr. at 40-41. Based on our review of the record, we conclude that the Judge’s material findings and conclusions are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also contends the Judge did not acknowledge his accountant’s letter that indicated Applicant was “in full compliance with the Internal Revenue Service at this time.” AE B. The accountant’s letter noted that Applicant filed the delinquent tax returns, made an estimated payment of \$94,000 in 2010, but still had a remaining tax liability for an unspecified amount that was being taken care of through an installment agreement. While the Judge cites to AE B (Decision at 3), she did not specifically reference the accountant’s statement about Applicant being in “full compliance” with IRS requirements. As Applicant states in his appeal brief, a Judge is not required to discuss each and every piece of evidence in rendering a decision. Appeal Brief at 5, citing ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). We find the Judge did not err by not mentioning the accountant’s statement about Applicant “full compliance” with IRS requirements. While the Judge’s decision discussed the significant actions that Applicant had taken to resolve his tax problems, including those set forth in the accountant’s letter, those actions did not compel the Judge to issue a favorable security decision. In this regard, we note that the Judge was required to consider not only the actions Applicant had taken to resolve his financial problems, but also the circumstances underlying those problems that impugn his reliability and judgment. *See, e.g.*, ISCR Case No. 14-03392 at 3 (App. Bd. Apr. 15, 2015).

Applicant further argues that he mitigated the Guideline F security concerns because, among other matters, he hired an accountant, completed financial counseling, and filed the delinquent tax returns. He contends his tax problems are under control. In essence, Applicant is challenging the amount of weight the Judge gave certain evidence. It is well established that 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. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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 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. 15-08885 at 3 (App. Bd. Jun. 21, 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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board