KEYWORD: Guideline F

DIGEST: Failure to file tax returns when due in itself raises concerns about an applicant's willingness to abide by rules and regulations. Adverse decision affirmed.

CASENO: 15-08778.a1

DATE: 07/24/2017

DATE: July 24, 2017

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

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 June 14, 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 May 5, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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

A veteran, Applicant has worked for his current employer since September 1977. His SOR alleges that he has failed timely to file his Federal and state income tax returns for 2010, 2011, and 2014. He attributed this to tax problems associated with his separation from his domestic partner, as well as to procrastination and neglect. Applicant provided no documents to show that he voluntarily filed returns for the years in question. The IRS levied against Applicant's bank account on several occasions: in 2009, for over $5,500; in 2013, for over $5,400; and in 2016, for over $2,400. Applicant has over $1,400,000 in savings. He has received awards for the quality of his work.

The Judge's Analysis

The Judge stated that there is no evidence of Applicant's having voluntarily filed his Federal or state tax returns for the years under review. The Judge concluded that Applicant's problems were within his control and that the levies against his bank account do not constitute a good-faith effort by Applicant to pay his taxes. The Judge stated that the timing of an applicant's tax filings is critical to assessing his trustworthiness, reliability, and good judgment.

Discussion

Applicant's brief includes reference to matters from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant states that he did not represent himself well at the hearing. He states that he could have been more forceful in presenting evidence and in arguing his case for mitigation. However, Applicant's argument does not on its face set forth a justiciable issue of harmful error. He received adequate guidance concerning his rights, including the right to an attorney. He testified at the hearing and submitted documents, one after the hearing was over, which the Judge admitted. Although he may be dissatisfied with the outcome of the case, there is nothing in the record to suggest that it was due to inadequate pre-hearing guidance or to any improper conduct by the Judge. We note Applicant's argument but are limited to addressing allegations of harmful error. *See, e.g.*, ISCR Case No. 15-01734 at 1-2 (App. Bd. Jan 19, 2017).

Applicant states that his employer has withheld taxes during the course of his many years of employment. He argues that his principal failure lay with his dilatory tax filings but that he is not guilty of tax evasion. However, failure to file tax returns when due in itself raises concerns about an applicant's willingness to abide by rules and regulations. Directive, Encl. 2 App. A ¶ 19(f); *See also* ISCR Case No. 15-03208 at 3 (App. Bd. Mar 7, 2017). Moreover, the Judge did not find nor imply that Applicant committed willful tax evasion. Evidence that an applicant's tax obligations have been satisfied through levies against his bank account does not establish that the applicant has actually made good-faith efforts to discharge his legal obligations to the Government. *See, e.g.*, ISCR Case No. 12-07229 at 2 (App. Bd. Jan. 13, 2017). Applicant's arguments are not enough 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. 15-08842 at 3 (App. Bd. Feb. 14, 2017). Applicant cites to favorable evidence, such as his service in the military. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App.

Bd. Mar. 7, 2017).

Applicant cites to some statements in the summary of his clearance interview to the effect that no one would question his honesty and that there is nothing in his past or current lifestyle that would subject him to blackmail. These comments summarize Applicant's answers at the interview. They do not constitute the investigator's opinion as to Applicant's eligibility for a clearance. Even if an investigator offered such an opinion it would not bind the DoD in its adjudication of Applicant's security concerns. *See, e.g.*, ISCR Case No. 15-00535 at 4 (App. Bd. Mar. 13, 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board