

KEYWORD: Guideline F

DIGEST: Applicant argues that the Decision devoted unreasonable attention to the one remaining tax lien at the expense of all the positive aspects of his record. We conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-08885.a1

DATE: 06/21/2017

DATE: June 21, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-08885
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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 26, 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 March 20, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White 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 has been employed by a Defense contractor since 2008. He is seeking to renew a clearance that he has held since 2005. Applicant's SOR included four Federal or state tax liens that resulted from a series of job-related relocations. The Judge resolved them in Applicant's favor. However, one additional allegation pertained to a state tax lien for a little over \$17,000, and the Judge found that it had not been resolved. Applicant claimed that he did not owe the claimed tax liability because he was working out of state during the time covered by the lien, tax years 1998 through 2004. The Judge found that he had not corroborated the basis for this dispute. He found that Applicant's CPA had advised him to settle with the state because he had admitted that he had lived there during at least some of the years in question. The Judge noted a 2005 credit report, (admitted as Item 3), which listed addresses going back to 2001. These addresses were all in the state that had filed the lien. The Judge also stated that Applicant had provided no evidence other than uncorroborated assertions regarding his current financial stability and ability to repay his debt. "All record evidence indicates that he is unwilling to do so in any event." Decision at 3.

The Judge's Analysis

Though noting the liens that Applicant did resolve, the Judge concluded that he had not mitigated the \$17,000 state tax lien. He cited to evidence that Applicant's CPA had recommended settling with the state and observed that Applicant had not provided documentary evidence in support of his claim to have been residing elsewhere. He stated that Applicant's "recent and continuing refusal to pay his apparently legitimate and substantial state income tax debt demonstrates an absence of rehabilitation or behavioral change." Decision at 6. He concluded that it is likely that similar problems will recur and with them the potential for pressure, coercion, or duress.

Discussion

Applicant cites to his dispute of the tax debt in question, his having resolved other debts, his good security record, and other favorable evidence. He argues that the Decision devoted unreasonable attention to the one remaining tax lien at the expense of all the positive aspects of his record. After considering this argument in light of the record as a whole, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017).

Applicant argues that the Judge's overall decision was based upon "limited information." Appeal Brief at 2. He states that information regarding his ability to pay his debts is available through his Federal income tax filings but no one requested evidence of financial stability. In a DOHA proceeding it is the applicant's duty to present evidence in mitigation of the concerns raised in his SOR. Directive ¶ E3.1.15. It is neither the Judge's nor Department Counsel's duty to seek

additional mitigating evidence or otherwise undertake further investigation of the concerns raised in an SOR. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015). Although *pro se* applicant's are not held to the standards of attorneys, they are expected to take reasonable steps to protect their rights. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). In the case before us, any paucity of mitigating evidence in the file was due to Applicant's own decisions after having received adequate notice of his evidentiary responsibilities.¹

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 14-06808 at 2 (App. Bd. Nov. 23, 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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

¹To the extent that Applicant is challenging the Judge's findings about the state tax lien, we conclude that the findings are supported by substantial evidence. *See* ISCR Case No. 14-04435 at 4 (App. Bd. Mar. 13, 2017).

