

KEYWORD: Guideline F

DIGEST: An ability to argue for an alternative weighing 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: 16-01750.a1

DATE: 10/11/2017

DATE: October 11, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-01750
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Shawn C. Graham, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 5, 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 July 5, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 worked for his current employer since 2014 and has worked in the Defense industry for nearly 35 years. He has held a clearance since 2000. Applicant's SOR contains one allegation, that he owes the IRS about \$32,000 for tax years 2011 through 2013. He also owes his state about \$6,500 in delinquent taxes. Applicant's difficulties were caused by his not having sufficient withholding from the profits arising from a real estate sale. He experienced some unemployment prior to his current job and exhausted his savings in order to pay his living expenses. He was not able to make his current payments as well as discharge his tax obligations.

Applicant has now paid the IRS for tax years 2011 and 2012. However, he currently owes a little over \$30,000 for taxes due for 2013 and for 2015. He set up a payment plan with the IRS after he received the SOR. This plan, which the agency has approved, requires him to pay \$388 a month, although Applicant had not started making payments by the close of the record.

The Judge's Analysis

The Judge noted Applicant's unemployment, which was beyond his control. She concluded, however, that he had not acted responsibly in regard to his tax problem, in light of evidence that he did not start paying his debts until he received the SOR. She cited to Applicant's agreement with the IRS. However, since he had not started actually complying with the plan, the Judge concluded that he has not demonstrated that his security-significant conduct is being resolved. In the whole-person analysis, the Judge cited to Applicant's many years of working in the Defense industry. Despite this, Applicant's tax delinquencies suggest that he has not shown the level of judgment necessary for one who has access to classified information.

Discussion

Although Applicant styled his first assignment of error as a challenge to the sufficiency of the Judge's findings of fact, the tenor of his argument appears to be that she did not extend appropriate weight to favorable evidence, such as his IRS payment plan and the efforts he undertook to obtain its approval, along with evidence that he has the financial resources to pay off his tax debts should the plan not be sufficiently mitigating. An ability to argue for an alternative weighing 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). To the extent that Applicant has challenged the sufficiency of the findings, we conclude that the Judge's material findings "are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The decision is sustainable on this record. A person who fails to fulfill legal obligations, such as paying taxes when due, may be lacking in the judgment and reliability required of those with access to classified information. *See, e.g.*, ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017). "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