

KEYWORD: Guideline F

DIGEST: Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 12-09421.a2

DATE: 10/02/2018

DATE: October 2, 2018

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| In Re:) | |
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| -----) | ISCR Case No. 12-09421 |
|) | |
|) | |
| 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 September 28, 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 August 18, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On November 15, 2017, we remanded the case. On June 29, 2018, the Judge issued a Decision on Remand that denied Applicant’s request for a security clearance. Applicant again appealed pursuant to the Directive.

Applicant raised the following issue in his latest appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Decision on Remand.

The Judge’s Findings of Fact

Applicant, who is 62 years old, has held a security clearance for about 35 years. He and his wife are the guardians for three young children. He attributed his financial problems to expenses arising from his mother’s passing, periods of unemployment between 2001 and 2014, and responsibilities arising from being a guardian.

The SOR alleged that Applicant failed to file his state income tax returns for 1998, 2000, 2002, 2003, and 2004; that he owed delinquent state taxes for 2001, 2002, 2004, 2005, and 2008; that he had a Federal tax lien entered against him in 2011; that he was indebted on a collection account and a charged-off account; and that he was arrested in 2013, charged with providing false information to increase benefits, pled guilty, and agreed to pay back the amount of unemployment benefits he was not entitled to receive. The Judge found against Applicant on the state tax filing deficiencies and the allegation pertaining to the false information offense. The Judge found in favor of Applicant on the other allegations.

Applicant did not consider the filing of his state tax returns to be a significant matter because he always received a small refund. He admitted the alleged tax filing deficiencies. There is no record that he filed those tax returns. During a period of unemployment from May to September 2012, he collected unemployment compensation. After obtaining his next job, he continued to collect unemployment benefits for at least a month. Because his earnings were low in the new job, he convinced himself that he was justified in continuing to collect unemployment benefits. He now understands that behavior did not make sense. He informed his new employer of his arrest. He pled guilty to a misdemeanor offense and paid restitution and court costs of about \$1,500.

The Judge’s Analysis

Applicant failed to file his state tax returns for five years, did not pay his delinquent state taxes until the SOR was issued, and fraudulently received unemployment compensation for at least one month while holding a security clearance. Applicant provided no documentation that he has filed his state tax returns since 1998. He has not established that he acted responsibly under the circumstances or that his taxes are being resolved or are under control.

Discussion

As best we can discern from Applicant's appeal brief, he is complaining about delays in issuing the Decision on Remand.¹ As we previously stated, absent a showing that the timing of the issuance of the Judge's decision caused an identifiable prejudice to the appealing party, mere proof of a delay is not sufficient to warrant remand or reversal of a Judge's decision. *See, e.g.*, ISCR Case No. 02-32581 at 3 (App. Bd. Jun. 9, 2005). In this case, Applicant has not established that any identifiable prejudice arose from the length of time it took to issue the Decision on Remand.

Applicant also contends the Judge did not consider the documents he submitted during the remand. In doing so, he highlights information in those documents and argues he mitigated the alleged security concerns. The Judge, however, made findings of facts regarding the documents submitted on remand. Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor 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. 15-01717 at 4 (App. Bd. Jul. 3, 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."

¹In the Decision on Remand, the Judge noted that Applicant's request for a 60-day period to supplement the record on remand was granted. Applicant's requests for two other extensions for that time period were also granted.

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