

KEYWORD: Guideline F

DIGEST: An appealing party must state with sufficient specificity what it is about a Judge's decision that he or she believes to be erroneous so as to enable reviewing authorities, such as the Appeal Board, to address the assignment of error We are unable to determine which findings Applicant is contesting. Adverse decision affirmed

CASENO: 15-01283.a1

DATE: 01/13/2017

DATE: January 13, 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**

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 25, 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 October 21, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant, who is 39 years old, has worked for his employer since 2001. He admitted that he failed to file his Federal and state income tax returns for 2008 through 2011. He attributed the delay in filing his tax returns to his computer hard drive crashing in 2008 and to becoming distracted by work and other commitments. He also indicated that he needed information from his 2008 and 2009 tax returns to file the subsequent year’s tax return. Additionally, he believed that he could not file tax returns for subsequent years unless he had filed for the previous year and, if he was owed refunds, the IRS would not be concerned about his failure to file his tax returns.

In 2012, Applicant disclosed in his security clearance application (SCA) and during his personal subject interview (PSI) that he had not filed his tax returns for 2008-2011. He stated that he was going to seek assistance from an accountant and planned to file his tax returns in December 2012. After the PSI, he believed his security clearance hearing would occur shortly and that it “would look shady” or that he was “trying to cover up [his] track” if he filed his tax returns. Decision at 2.

Applicant signed his Federal and state income tax returns for 2008-2010 on the date of his security clearance hearing in September 2016 and was entitled to refunds for each of those tax returns. He filed his Federal tax returns for 2011-2014 in April 2015 and was entitled to refunds for each of those tax returns. He filed his 2015 Federal income tax return on time.

Applicant does not have any delinquent debts or negative entries on his credit report. Besides his tax return filing issues, he has no other financial concerns.

### **The Judge’s Analysis**

The Judge concluded:

[Applicant’s] explanations for not filing his tax returns justify at most a brief delay for filing his income tax returns. My assessment is that his failure to timely file his federal and state tax returns for tax years 2008 through 2011 is based mostly on

procrastination, his belief that he would not suffer any penalty so long as he was due a refund, and his failure to give filing his tax returns a high priority. His explanations do not fully mitigate financial considerations security concerns.

## **Discussion**

Applicant contends that the Judge's findings are not supported by such relevant evidence that a reasonable person might accept the conclusions in light of the full record. Appeal Brief at 5. However, he did not specify what particular findings were unsupported.<sup>1</sup> An appealing party must state with sufficient specificity what it is about a Judge's decision that he or she believes to be erroneous so as to enable reviewing authorities, such as the Appeal Board, to address the assignment of error. *See, e.g.*, ISCR Case No. 14-05920 at 3 (App. Bd. Jan. 8, 2016). We are unable to determine which findings Applicant is contesting.

Applicant argues that the Judge failed to consider pertinent mitigating evidence. Specifically, he claims the Judge did not give him full credit for his testimony and other evidence regarding his willingness to file all necessary tax returns. This argument, however, fails to rebut the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016). Applicant also argues that he successfully mitigated the Guideline F security concerns because the late tax filing occurred under circumstances that should not cast doubt on his reliability, that he made good-faith and substantial efforts to resolve all of his outstanding tax filing problems; and that those 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. 14-06634 at 2 (App. Bd. Apr. 28, 2016).

Contrary to Applicant's contention, the Judge's whole-person analysis supports a unfavorable security clearance determination. In conducting his whole-person analysis, the Judge complied with the requirements of Directive ¶ 6.3, by considering the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015). The Judge correctly cited an Appeal Board decision for the propositions that failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations and that voluntary compliance with rules and regulations is essential for protecting classified information. Decision at 8, citing ISCR Case No. 15-01031 at 4 (App. Bd. Jun. 15, 2016). 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. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

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<sup>1</sup> We note that Applicant admitted in his response to the SOR that he did not file his tax returns for the listed years, which supported the Judge's determination that disqualifying condition 19(g) (*i.e.*, failure to file annual Federal, state, or local tax returns as required . . .) was established.

Evidence that Applicant failed to file his Federal and state income tax returns in a timely manner for four years supports the Judge's ultimate conclusion.

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, 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