

KEYWORD: Guideline F

DIGEST: While the Judge made some errors in his findings of fact, none of the errors that Applicant has identified are likely to have affected the outcome of the case. We conclude, therefore, those identified errors were harmless. Adverse decision affirmed.

CASE NO: 15-04850.a1

DATE: 01/26/2018

DATE: January 26, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-04850
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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 May 24, 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 18, 2017, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law.

Consistent with the following discussion, we affirm the Judge's decision.

Applicant claims the Judge erred in three findings of fact. First, he notes the Judge found he held a security clearance from 1995 to 2008. In the appeal brief, he claims he held a security clearance from 1984 to 2017. In his 2012 security clearance application, Applicant checked boxes reflecting that he did not know the dates he was granted clearance eligibility or access to classified information, but estimated the Government investigated his background in 1986 and 2000. GE 1 at 42-43. At the hearing, he testified that he was granted a security clearance when he joined the military in 1983 and maintained one until 2007. His testimony does not clearly reflect that he held a security clearance beyond 2007. Tr. at 14. Second, he claims the Judge erred in finding: "By December 2015, he had yet to file any of his tax returns for tax years 2007 through 2013" He contends that "[y]ears not filed where [sic] 2007 through 2011". Appeal Brief at 1. IRS tax transcripts reflect that Applicant filed his Federal income tax return for 2012 on June 17, 2013, and for 2013 on May 26, 2014. Applicant's Exhibit Q. Third, he challenges the Judge's finding that "[b]etween 2007 and 2012, Applicant incurred approximately \$270,000 of delinquent debt, as alleged in the SOR." Applicant asserts his "[a]pproximate indebtedness was \$252,000", consisting of \$160,000 in back taxes, \$70,000 owed to a lawyer, and \$22,000 in other indebtedness. Appeal brief at 1. We note the SOR debts add up to about \$258,900. While the Judge made some errors in his findings of fact, none of the errors that Applicant has identified are likely to have affected the outcome of the case. We conclude, therefore, those identified errors were harmless. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant also contends that the Judge erred in his mitigation and whole-person analysis. In doing so, Applicant highlights evidence in his favor, including that he has accumulated no new debt in the past five years, he has filed all required tax returns, and he has an active tax repayment plan in place.¹ As the Appeal Board has previously stated, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as not filing tax returns or paying taxes when due, 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. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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

¹ Applicant, however, concedes that his failure to file his tax returns in a timely manner was a "serious transgression." Appeal Brief at 2.

information will be resolved in favor of national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra’anan

Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board