

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant’s arguments consist of disagreements with the Judge’s weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-08649.a1

DATE: 02/26/2018

DATE: February 26, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-08649
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

John P. Mahoney, Esq.
Sterling L. DeRamus, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 10, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 13, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 works for a Federal contractor. During a previous employment as a contractor, her building access was restricted due to "credit issues," and she consequently lost her job. Decision at 2. Applicant has unpaid Federal and state tax obligations, totaling over \$70,000, for tax years 2008-2010 and 2014. She attributed her problems to having made withdrawals from a 401(k) plan, inadequate withholding, and her husband's failure to have had sufficient withholding from his own salary or to have made quarterly payments.

Applicant entered into installment agreements with the IRS, but she submitted no documentation to show that she had actually made any of the payments. She did show, however, that a month after the hearing, she signed documentation to have Federal tax liabilities automatically deducted from her pay. Applicant's tax liabilities are the subject of judgments and/or liens against her. She is refinancing her home, intending to use the equity to pay off consumer debt and her tax debt. She has refinanced her mortgage to pay off debts in the past. Despite claiming that she did not have enough funds to pay her taxes in 2014, she took a vacation in Mexico.

In her security clearance application (SCA), Applicant failed to disclose her Federal tax liens and judgments. She also did not disclose a state tax lien. In responding to DOHA interrogatories, Applicant failed to disclose her back taxes or the judgments and liens resulting therefrom. Applicant has submitted no evidence of financial counseling. She did provide character references, which describe her as hard-working, reliable, and trustworthy. Applicant is active in her church.

The Judge's Analysis

The Judge stated that Applicant had submitted some evidence in mitigation of the Guideline F concerns, in that she had paid some SOR allegations regarding consumer debt and had agreed to installment plans for some of her tax delinquencies. He also noted evidence that Applicant's husband experienced unemployment, which was a circumstance outside her control. However, he concluded that Applicant had not met her burden of persuasion as to mitigation, citing to her having prioritized leisure travel over tax payments. He noted that Applicant undertook to resolve her tax debts only after receiving the SOR and that she had disregarded her financial obligations even after previously having lost a job due to similar problems.

The Judge noted that Applicant's tax problems were substantiated by liens and judgments, yet she only disclosed debts that she had already paid. He found that Applicant's failure to have disclosed her significant tax liabilities was deliberate.

Discussion

Applicant cites to an SOR allegation of about \$887, for which the Judge entered adverse findings. She states that she had paid this debt. However, even if the Judge erred, it did not likely affect the outcome of the case. Therefore, any such error is harmless. *See, e.g.*, ISCR Case No.15-

05047 at 4 (App. Bd. Nov. 8, 2017). Applicant argues that her omissions from the SCA and interrogatories were not deliberate. However, her argument consists of a disagreement with the Judge's weighing of the evidence, which is not enough 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.15-07062 at 2 (App. Bd. Nov. 21, 2017). The Judge's finding that Applicant had deliberately withheld material information is supported by substantial evidence. *See* Directive ¶ E3.1.32.1 for the standard applicable in DOHA proceedings for a Judge's findings of fact.

Applicant contends that she should be entitled to an "innocent spouse" exception regarding the tax liabilities that were due to her husband's failure to make quarterly payments. However, even if this were so, it would not mitigate concerns arising from Applicant's failure to have addressed tax obligations that resulted from her own actions, nor would it mitigate her Guideline E concerns. Moreover, legal defenses and exceptions that may be relevant in other kinds of proceedings, such as enforcement of Federal tax laws, do not necessarily apply in DOHA proceedings, which are directed toward evaluating an applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 02-12199 at 6, note 7 (App. Bd. Aug. 8, 2005). Applicant's dilatory response to addressing her tax obligations supports the Judge's overall conclusion that she may be lacking in the judgment expected of those who have access to national security information.

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."

Order

The Decision is **AFFIRMED**.

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board

Signed James F. Duffy _____

James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale _____

Charles C. Hale
Administrative Judge
Member, Appeal Board