

KEYWORD: Guideline F

DIGEST: Applicant failed to file timely tax returns for 2010, 2012 and 2013. He knew he owed substantial sums of money and “just blew it off.” Adverse decision affirmed.

CASENO: 16-00173.a1

DATE: 01/29/2018

DATE: January 29, 2018

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 16-00173

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 February 17, 2017, 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 23, 2017, 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant served in the military from 1994 through 2000. He has been employed by DoD contractors for two years. Previously divorced, he remarried in 2015. Applicant and his father went into business, opening two restaurants which failed in about 2014. For two years after that Applicant worked for a friend’s business, receiving a limited income. He experienced two periods of unemployment until he started working with his current employer. He also has a part-time job. His monthly gross income is \$8,000.

Applicant failed to file tax returns in a timely manner for 2010, 2012, and 2013. He knew that he owed a substantial amount of money but “honestly just blew it off.” Decision at 4. He got in touch with the IRS twice and was told that he had to file before he would qualify for a payment plan. However, Applicant’s former wife took his documentation and would not communicate with him. Although the IRS told him that he still needed to file his returns, the agency advised him that they were not seeking to levy his bank account. Accordingly, Applicant “blew it off again.” *Id.* He filed his Federal returns for the tax years in question in January 2017. Applicant owes the IRS over \$30,000 for taxes due in 2006, and he failed to file his state tax return for 2010. He filed state tax returns for other years.

Applicant and his father closed down a business, and the landlord obtained a judgment against them for over \$29,600. Applicant filed for Chapter 13 bankruptcy protection, paying \$1,700 a month to the trustee. He will pay about \$100,000 into the plan as it is currently structured, and his secured debts will be paid. After the plan is completed, his unsecured nonpriority debts will be discharged.

Applicant also owes about \$12,000 in child support obligations, due to missed payments from 2008 through 2012. This will be paid as a priority debt through his bankruptcy plan. This debt was not alleged in the SOR. The Judge stated that he was considering it for such things as assessing Applicant’s credibility, evaluating his case for mitigation and rehabilitation, and the whole-person analysis.

The Judge’s Analysis

The Judge stated that Applicant's periods of unemployment and his divorce were circumstances outside his control that affected his financial condition. He entered favorable results for some of the SOR debts, and he characterized Applicant's bankruptcy plan as "a positive financial development." *Id.* at 9. However, he found that Applicant had demonstrated no progress in resolving the judgment debt to the landlord. He also entered adverse findings regarding Applicant's failure to file his Federal and state income tax returns and his tax debt to the IRS. He stated that the record does not contain sufficient information about why Applicant did not make greater progress sooner on his tax problems and that there is insufficient evidence that Applicant's financial difficulties are resolved, under control, and not likely to recur.

In the whole-person analysis, the Judge noted evidence of Applicant's military service and that of his family members. He noted Applicant's statement that he loves his work and intends to protect national security. However, he concluded that Applicant's tax delinquencies and the unpaid judgment were significant impediments to securing a clearance and that Applicant's ameliorative efforts, such as filing for bankruptcy and belatedly filing his returns, are "too little, too late." *Id.* at 14. Accordingly, he concluded that Applicant had failed to mitigate the concerns arising from these financial problems.

Discussion

Applicant argues that his Chapter 13 bankruptcy plan shows that his debts are in the process of being resolved. He states that he attempted to file his returns earlier than 2017, noting among other things evidence that he did not have the required documentation. He pointed to his testimony that he had attempted to contact the IRS on more than one occasion and contends that he is making payments on his state tax obligation. Applicant's arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they 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. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and 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. 15-06707 at 3 (App. Bd. Aug. 15, 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, 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board