

KEYWORD: Guideline F

DIGEST: The Judge's conclusion that neither Applicant nor her husband were able to show a clear understanding of the origin of their tax problems is consistent with the record that was before her. We conclude that the Judge's material findings are based upon a reasonable interpretation of the record that was before her. Adverse decision affirmed.

CASENO: 16-02584.a2

DATE: 12/13/2018

DATE: December 13, 2018

In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 16-02584

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Daneen Banks, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 3, 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). On October 5, 2017, Department Counsel amended the SOR to include additional Guideline F allegations. Applicant requested a hearing. On May 2, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On August 21, 2018, we remanded the case to the Judge to correct identified errors. On September 19, 2018, the Judge issued a Remand Decision in which she again denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive.

Applicant raised the following issues on appeal: whether the Judge failed to consider significant record evidence and 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, a job she has held since 2012. She has had a security clearance since 1997. Applicant’s SOR alleged several financial delinquencies, and all but one are failures to file and/or pay Federal and state tax obligations. Applicant’s problems began in 2006, and, by 2009, she and her husband were not able to pay their taxes. Applicant explained that she and her husband did not have taxes withheld from their pay, due to oversight. Applicant did not review her pay stubs or monitor the family bank account, so she did not discover this problem.

Applicant’s husband managed the household finances, and, until the current adjudication, Applicant did not inquire about the state of their finances, nor did her husband volunteer any information. Applicant is not aware who prepares the couple’s taxes though she assumes that her husband hires someone. A tax preparer whom the couple had used in the past was convicted of fraud. Applicant was not identified as one of the victims. Applicant’s contribution to the family’s tax preparation is to provide her husband with whatever documentation he requires. She learned of the tax liens during her clearance interview.

Applicant’s husband stated that the couple had been in payment plans off and on since 2006, and the record contains documentary evidence that corroborates this. He could not identify a specific event that prevented them from paying their taxes, although he noted his wife’s health issues as a possible factor. He admitted that he did not pay close attention to their tax obligations until the current adjudication. Since mid-2015, Applicant has made consistent payments toward their tax delinquencies.

Applicant and her husband did not provide evidence of financial counseling, and her husband was not able to provide the name of their tax preparer, his qualifications, or his credentials. There are no documents identifying a reputable tax preparer.

The Judge's Analysis

The Judge resolved some of the allegations in Applicant's favor. She noted evidence that Applicant has resolved a debt resulting from a timeshare and that she successfully disputed two of the state tax liens. Applicant has made arrangements to pay the remaining taxes, although she still owes about \$40,000 to the IRS. The Judge noted that Applicant and her husband have a twelve-year history of tax problems, largely of their own making. She stated that the couple did not take steps to address their tax problems until Applicant was faced with loss of her security clearance. Applicant did not establish that the couple has hired a reputable tax preparer. The Judge concluded that Applicant had failed to show that her tax problems are under control.

Discussion

Applicant cites to record evidence that she contends the Judge did not consider, such as the couple's installment agreements, tax payments, and medical problems, as well as the fraud conviction of their previous tax preparer. She argues that her numerous surgeries entailed expenses that prevented the couple from paying their taxes. She challenges the Judge's finding that she did not corroborate her claim to have hired a reputable tax preparer. She also challenges the finding that the couple have not received financial counseling. Applicant contends that the Judge's adverse conclusions are contrary to the weight of the record evidence.

The Judge made detailed findings about the things that Applicant has addressed in her brief, including Applicant's testimony that her medical difficulties were at the root of the couple's tax delinquencies. However, the Judge's conclusion that neither Applicant nor her husband were able to show a clear understanding of the origin of their tax problems is consistent with the record that was before her.¹ We conclude that the Judge's material findings² are based upon a reasonable interpretation of the record that was before her. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

Applicant contends that the Judge failed properly to apply the whole-person concept. However, after examining the Decision, we conclude that the Judge complied with Directive ¶ 6.3 in that she considered the totality of the evidence in reaching her overall conclusions. The Judge's findings, and the evidence underlying them, (1) that Applicant failed to file returns and pay tax obligations for several years; (2) that neither she nor her husband could provide a reason that would

¹*See, e.g.*, the following colloquy: “[Judge]: [W]hy weren't you able to pay the taxes? [Applicant's husband]: There were other factors that may have come up. I can't at this point, I can't really say exactly why.” Tr. at 120.

²Applicant is correct that the voluminous documentary evidence did contain a few one-line references to the tax preparer's EIN, which corroborated Applicant's view that she has a qualified tax preparer. However, the Judge's error is harmless in that it did not likely change the outcome of the case. *See, e.g.*, ISCR Case No. 17-00936 at 3 (App. Bd. Oct 25, 2018).

clearly mitigate concerns arising from her tax delinquencies; and (3) that Applicant did not begin addressing her problems until she learned that her clearance was in jeopardy support the Judge's overall adverse findings. *See, e.g.*, ISCR Case No. 17-01256 at 3, 5 (App. Bd. Aug. 3, 2018) (An applicant who does not begin to address debts until after being placed on notice that his or her clearance is in jeopardy may lack the good judgment necessary to hold a clearance. Failure to comply with tax laws may evidence an unwillingness to abide by rules and regulations, including those that apply to national security concerns.)

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: 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