

KEYWORD: Guideline F

DIGEST: While the Judge may have erred in some of the challenged findings of fact, such errors were harmless because they likely had no affect on the outcome of the case. We note that Applicant has not shown the Judge committed any harmful error in his material findings involving the key security concerns, i.e., Applicant failed to file his Federal income tax returns for 2011-2014 in a timely manner and he failed to establish that he took responsible steps to resolve his delinquent Federal tax debts. Adverse decision affirmed.

CASENO: 16-04094.a1

DATE: 04/20/2018

DATE: April 20, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-04094
)	
Applicant for Security Clearance)	

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 March 10, 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 January 19, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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, we affirm.

The Judge’s Findings of Fact and Analysis

The SOR alleged that Applicant failed to file his Federal income tax returns for 2011-2014 in a timely manner and he had four Federal tax liens filed against him between 2010 and 2016 totaling about \$213,000. In his response to the SOR, Applicant admitted each of the SOR allegations with explanations. He also claimed he filed his delinquent tax returns in December 2016 and was working with an Internal Revenue Service (IRS) agent to establish an installment agreement to pay his taxes. He has held a security clearance since 1992.

Between 2010 and 2013, Applicant was a self-employed consultant. He attributed his tax filing lapses to not having sufficient income to pay the taxes he owed. His and his wife’s efforts to satisfy quarterly tax payments “were consistently weakened by their competing financial commitments to travel and buying expensive vehicles.” Decision at 3. He filed the delinquent tax returns after submitting his security clearance application (SCA) and undergoing a background interview. He filed his 2015 and 2016 Federal tax returns in a timely manner.

For the years 2010-2014, Applicant documented voluntary payments to the IRS of around \$41,000. Since late 2016, the IRS has been levying \$400 a month from his social security account. His current gross income is about \$140,000. His wife earns about \$103,000 annually. “Without an installment agreement in place with the IRS, it is unclear whether Applicant has formally applied for an installment agreement or whether the IRS would be willing to enter into a payment agreement with him, given the sizeable amount of back taxes owed.” Decision at 3-4. The back taxes reflected in the alleged Federal tax liens remain unresolved.

Applicant did not file his delinquent tax returns or apply for a installment agreement for his back taxes until the security clearance process was initiated. He has made only modest progress in paying his past-due taxes. His efforts preclude a conclusion that he has acted responsibly under the circumstances or that he initiated, and is adhering to, a good-faith effort to resolve these financial problems. His efforts are not enough to support favorable findings and conclusions regarding the alleged security concerns.

Discussion

Applicant challenges some of the Judge's findings of fact. When a Judge's finding are challenged, we examine them to see if they are supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

First, Applicant contends the Judge erred in finding he has held a security clearance since 1992. Applicant states that he was initially granted a security clearance in 1975 and, except for a voluntary leave of absence of about four years, has continued to maintain security clearance eligibility. Second, Applicant challenges the Judge finding that his ability to meet his financial obligations was weakened by his travel and buying expensive vehicles. He essentially argues his expenditures on travel and vehicles were reasonable given his use of timeshare exchanges and airline miles. We note his SCA reflects that he traveled on eight occasions to foreign countries for tourism purposes between 2010 and 2015. Government Exhibit 1. He also testified that he purchased a vehicle for about \$32,000 in 2015. Tr. at 39. Third, Applicant challenges the Judge's finding that his yearly gross income is about \$140,000. He claims that figure is overstated and points to his W-2 statements from 2013-2016 that reflect his salary ranged from about \$104,000 to \$129,000 during that period. Finally, Applicant challenges the Judge's findings about his efforts to resolve his tax debts, noting that he entered into an installment agreement with the IRS in December 2017 and he has been making regular payments under that agreement. However, since the record in this proceeding closed in August 2017, information about this installment agreement constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

While the Judge may have erred in some of the challenged findings of fact, such errors were harmless because they likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In this regard, we note that Applicant has not shown the Judge committed any harmful error in his material findings or conclusions involving the key security concerns, *i.e.*, Applicant failed to file his Federal income tax returns for 2011-2014 in a timely manner and he failed to establish that he took responsible steps to resolve his delinquent Federal tax debts. To the extent that he is arguing the Judge mis-weighed the evidence, his arguments are not sufficient to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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. 15-08782 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, 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