

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 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 March 6, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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 holds bachelor’s and master’s degrees. He has worked for a Defense contractor since 1998 and has held a clearance since 2011. Applicant failed to file his Federal and state income tax returns for 2007 through 2016. He filed his returns by the close of the record. In addition, both the IRS and his state taxing authority garnished Applicant’s wages, although, by the end of 2017, Applicant owed no past due taxes either to the Federal Government or to his state.

Applicant attributed his failures to his belief that he had three years in which to file his income tax returns, so long as he expected to receive a refund. He expressed a similar belief regarding his state taxes, although he was not able to cite to a state law or regulation to that effect. However, he also testified that he knew that he was supposed to file taxes on an annual basis and that a professional tax preparer had told him so. Moreover, despite his claimed belief that he had three years in which to file, Applicant filed his returns four years late for several years.

When he completed his 2011 SCA, Applicant did not disclose the full extent of his tax filing delinquencies. He did disclose that he ran a business from 2003 until 2015. At the hearing, he admitted that he did not file his business tax returns on time for 2007 through 2015.

Applicant has an annual salary of about \$90,000, and his wife is employed. He stated that they are financially stable. Applicant owns eight rental properties worth about \$600,000, with a mortgage debt of about \$440,000.

The Judge’s Analysis

The Judge cited to Applicant’s many years of having failed to file timely income tax returns. Though noting his claimed belief that he had three years in which to file returns, the Judge observed that Applicant had been placed on notice of his filing obligations by his tax preparer and that he had actually filed a number of returns *four* years late. The Judge stated that Applicant was not fully candid when he completed his 2011 SCA, in that he did not disclose all of his tax delinquencies, which detracted from his credibility. Though acknowledging Applicant’s many years of service to

the Defense industry and Applicant's having actually filed his delinquent returns, the Judge concluded that he had not established a track record of compliance with tax laws sufficient to mitigate the concerns in his case.

Discussion

Applicant cites to the provision of the U.S. tax code that establishes a three year statute of limitations for claiming a refund. He states that this was the basis for his erroneous belief that he could file his returns within three years. He cites to evidence that he does not owe tax obligations either to the IRS and to his state and that he has filed all of his returns. He argues that he did not intend to deceive when he failed to disclose all of his tax problems on his 2011 SCA.

The Judge made extensive findings about Applicant's circumstances, including the things that he addresses in his appeal brief, and discussed them in the Analysis portion of the Decision. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

To the extent that Applicant is challenging the Judge's credibility determination concerning the sincerity of his claimed belief about the statute of limitations, we note record evidence in which Applicant admitted that he had been informed that taxes are to be filed on an annual basis.¹ We are required to give deference to a Judge's credibility determinations, and Applicant's brief has not provided us with a reason to withhold that deference. Directive ¶ E3.1.32.1.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse decision is sustainable on this record. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns 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). *See Cafeteria and Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

In a security clearance adjudication, "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."

¹*See, e.g.*, the following: "I did know the April time frame filing date, I knew that. Again, but I think because I did file past that . . . beyond that date, I was fully aware of--that I had not met the annual year date." Tr. at 79.

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