

KEYWORD: Guideline F

DIGEST: After considering Applicant's brief in its entirety, we conclude that it does not rebut the presumption that the Judge considered all of the evidence in the record, nor does it show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. To the extent that Applicant is arguing that his tax problems do not establish security concerns, we note that the Directive explicitly identifies failure to file and pay taxes as something that raises a security concern. Adverse decision affirmed.

CASENO: 17-01007.a1

DATE: 11/21/2018

DATE: November 21, 2018

_____)	
In Re:)	
)	
-----)	ISCR Case No. 17-01007
)	
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 May 30, 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 August 31, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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

The SOR alleged that Applicant failed to file Federal and state income returns for 2010 through 2013. It also alleged that he owed the Federal Government over \$17,000 in back taxes and that he owed his state \$32,000. Applicant attributed his tax delinquencies to his attention having been directed toward church activities and to his effort to adopt two nieces. He also asserted that his wife’s employer did not withhold a sufficient amount from her paychecks. He stated that he had hired a tax firm to file his taxes for him, but he contended that the firm did not enter into a payment plan on his behalf. The Judge found that Applicant’s 2017 Federal return was not filed on time; in fact, it was filed six days after the hearing.

Applicant claimed that he had paid all of his delinquent tax obligations, although the Judge found that he did not provide documentary evidence regarding his debt to the IRS. Applicant uses a commercial tax application that is user friendly and less expensive. Because he has ceased his music directing activity at his church, he now has more time to devote to his taxes. In addition to his tax problems, Applicant owed funds to a telecommunications company. He did not provide documentary evidence of his dispute of that debt.

The Judge’s Analysis

The Judge resolved the allegation regarding Applicant’s state tax debt in his favor. As to his adverse findings concerning the other SOR allegations, he stated that Applicant failed to demonstrate how the duties at his church and his efforts to adopt his nieces constituted reasons to have failed to file tax returns and pay the taxes due. He also reiterated his finding that Applicant did not substantiate his claim to have paid off his debt to the IRS, nor did Applicant corroborate his claim to have filed his delinquent tax returns.

Discussion

Applicant cites to evidence that, he believes, the Judge failed to consider. He claims, for example, that he provided evidence from which it may reasonably be inferred that he has paid his debt to the IRS. He cites to his testimony about the stresses associated with his work at church and

with adopting his nieces, which he contends demonstrates that his failure to have filed his returns was not a life-long habit but, rather, situational.

After considering Applicant's brief in its entirety, we conclude that it does not rebut the presumption that the Judge considered all of the evidence in the record, nor does it show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018). To the extent that Applicant is arguing that his tax problems do not establish security concerns, we note that the Directive explicitly identifies failure to file and pay taxes as something that raises a security concern. Directive, Encl. 2, App. A ¶ 19(f). Moreover, the Directive presumes that there is a rational connection between admitted or proved conduct under any of the Guidelines and an applicant's eligibility for a security clearance. *See, e.g.*, ISCR Case No. 17-02595 at 3 (App. Bd. Jul. 31, 2018).

The Judge's findings and the record evidence underlying them that Applicant failed to file tax returns for four consecutive years, his failure to have paid his Federal tax obligations, and his failure to provide a sufficient explanation for these delinquencies support his adverse decision. A person who fails to abide by legal obligations, such as filing returns and paying taxes when due, does not exhibit the good judgment and reliability expected of those with access to national security information. *See, e.g.*, ISCR Case No. 17-01256 at 3 (App. Bd. Aug. 3, 2018).

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. "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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board