

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant’s evidence that her security-significant conduct arose from the stresses of her job and poor time management, on the whole, supports rather than undermines the Judge’s ultimate conclusion that Applicant may be lacking in qualities essential for the protection of classified information, insofar as it does not establish a justification or reasonable excuse for her problems. Indeed, 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. Adverse decision affirmed.

CASENO: 17-01471.a1

DATE: 10/23/2018

DATE: October 23, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 17-01471
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Francis J. Flanagan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 16, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Applicant has worked for a Defense contractor since 2006. She has an adult offspring from a prior marriage. She was first cleared for access to classified information in 1984 and currently holds a secret clearance.

Applicant did not file her federal or state income tax returns for 2013 through 2016. Although she collected the information that she needed, she did not file her returns in a timely fashion. She received some communications from the IRS but was not able to state whether or not she ever responded to them. Appellant attributed her tax problems to her mistaken belief that she would not owe taxes after adjusting her withholding, as well as to the stresses of her job and poor time management. By late 2017, all of Appellant’s delinquent returns had been filed through the assistance of an accountant. In addition, she owed the IRS and her state back taxes. She claimed to have paid her state taxes and to have resolved her federal ones through an installment plan. The Judge noted some inconsistent statements that Applicant made, for example, regarding the years covered by her installment plan with the IRS.

A co-worker stated that Applicant was the best at her job and surmised that her tax problems were related to her being a workaholic. This witness, who has a clearance, believes that Applicant should be granted access to classified information. Another senior official at Applicant’s place of employment, who also has access to classified information, stated that he trusted Applicant and considered her to be honest. He stated that he had been surprised to learn that Applicant had not filed her tax returns but believes that Applicant has learned her lesson and that she will use an accountant in the future. Finally, a military officer who has worked with Applicant stated that he trusts her, despite having recently learned of her tax filing delinquencies. He stated that Applicant has not engaged in any conduct at work that would raise concern.

The Judge’s Analysis

The Judge noted that Applicant’s belated tax return filings appear to have coincided with her receipt of DOHA interrogatories. Although recognizing that Applicant’s returns had finally been

filed, the Judge stated that she extended consideration to Applicant's prior conduct in evaluating Applicant's eligibility for a clearance. She cited Appeal Board precedent to the effect that applicants who address their tax delinquencies only after their clearances are in jeopardy may be unwilling to follow rules and regulations when their immediate interests are not imperiled.

The Judge also found that Applicant's tax problems were troubling in light of her education and her "well-earned reputation at work for following through on her commitments." Decision at 10. The Judge cited to evidence that, in 2016, Applicant promised to address her tax delinquencies, yet she did not do so until late the following year, with no apparent justification. Accordingly, the Judge stated that evidence of these filings was not entitled to "controlling weight." *Id.* The Judge reiterated these concerns in her whole-person analysis, in which she stated that Applicant's "eleventh-hour rectification of her tax filings is too recent to create a track record of reasonable assurances" of tax law compliance. *Id.* at 13.

Discussion

Applicant contends that she has demonstrated mitigation, citing to prior cases in which we held that an applicant does not need to be debt free but, rather, must establish a reasonable plan for addressing his or her financial problems, accompanied by concomitant conduct. *See, e.g.*, ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). Applicant argues that her having filed her tax returns fulfills the requirements set forth in the cited case.

Of course, that Applicant had filed all of her delinquent returns by the close of the record was evidence that the Judge was required to consider, along with all of the other evidence in the record. However, belated discharge of legal obligations such as filing income tax returns does not preclude a Judge from considering the circumstances underlying the applicant's financial problems. *See, e.g.*, ISCR Case No. 17-01213 at 4 (App. Bd. Jun. 29, 2018). We note the Judge's findings about Applicant's education and the esteem she enjoys for her devotion to her job, which demonstrate that Applicant was not lacking in the capacity to file her annual returns. Applicant's evidence that her security-significant conduct arose from the stresses of her job and poor time management, on the whole, supports rather than undermines the Judge's ultimate conclusion that Applicant may be lacking in qualities essential for the protection of classified information, insofar as it does not establish a justification or reasonable excuse for her problems. Indeed, 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. 17-01256 at 3 (App. Bd. Aug. 3, 2018).

Applicant cites to her excellent character references, her financial stability, and her devotion to her family. The Judge made extensive findings about Applicant's circumstances. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor is it 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. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

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