

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 29, 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 May 25, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge’s decision.

The Judge’s Findings of Fact

Applicant, 62, has been married for over 35 years. He worked for a Federal agency for about 12 years before starting to work for a defense contractor in 2012. In security clearance applications, he disclosed that he had Federal tax liens filed against him in 2008 and 2009. In responding to interrogatories, he admitted that he did not file his Federal and state income tax returns for 2013-2016.

Applicant attributed a Federal tax lien filed against him for about \$63,000 in 2005 to a failed business venture and a penalty for a 401(k) withdrawal. The lien was paid in 2009. He attributed his tax filing deficiencies to marital disagreements that started in 2013, resulted in a separation in 2014, and ended in a reconciliation in 2015. He has provided a tax preparer the pertinent information to file the tax returns.

In 2008, a Federal tax lien was filed against Applicant for about \$37,000. In a background interview, he stated he was making monthly payment to the IRS of \$1,220 and provided proof of five monthly payments in 2017. He did not provide documentation confirming the current status of that lien. In 2009, a Federal tax lien was filed against him for about \$11,300, but it was released in 2017. He and his wife earn at least \$140,000 annually. He is working with a tax preparer to resolve his tax issues.

The Judge’s Analysis

Applicant has not filed his Federal and state income tax returns for 2013-2016 and has an outstanding Federal tax lien from 2008. He did not provide a good explanation for his tax problems. In 2017, he resolved a lien for a tax liability dating back ten years. The actions he has taken to resolve his tax problems are not sufficient to mitigate the security concerns.

Discussion

Applicant's appeal argues for an alternative weighing of the evidence. He contends, among other matters, that he always filed his income tax returns in a timely manner before 2013, that he was unable to file the income tax returns in question because of a marital dispute; and that he resolved a tax lien. He argues that his tax problems were infrequent and occurred under extreme circumstances that are unlikely to recur. However, an applicant's disagreement with the Judge's weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant's appeal brief fails to establish the Judge committed any harmful error. 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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board