

KEYWORD: Guideline F; Guideline J; Guideline E

DIGEST: The record provides no basis to conclude that the Judge’s material findings are an unreasonable or implausible interpretation of the evidence. A review of the record as a whole does not support Applicant’s claim that he was denied the due process rights secured under the Directive. Adverse decision affirmed.

CASENO: 05-11641.a1

DATE: 07/31/2007

DATE: July 31, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 05-11641
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 19, 2006, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline

J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 29, 2006, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge made findings of fact that were not supported by record evidence and whether Applicant was denied due process of law. We also construe Applicant's appeal as contending that the Judge's adverse security clearance decision was arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following findings of fact: Applicant failed to file both state and federal income taxes from the mid-1990s until 2004. Applicant also had not filed state and federal taxes for several years during the 1980s.

Further, she found: "Applicant's explanation for his failure to file taxes was that he is a procrastinator and has a great deal of anxiety and avoidance issues regarding unpleasant tasks. He blames his upbringing and alcoholic parents for emotional issues he developed in avoiding things he does not like . . . He has attended Alcoholics Anonymous and ALANON to help him with his problems. He has diagnosed himself and believes he has avoidance issues that are related to his background and caused him not to file his taxes. He has not confirmed his diagnosis with a mental health professional. He has not sought any treatment, other than attending AA and ALANON, for his avoidance issues that he believes caused him to procrastinate [doing] things he does not like." Decision at 4.

"Applicant's repeated failure to file his tax returns for two lengthy periods of time are criminal violations of federal law. He did not withhold enough money from his pay, and because his salary was increasing, so was his tax liability. He was aware that each of the tax years he failed to withhold enough money to cover his tax liability and failed to make any changes during this ten-year span." Decision at 5.

Applicant was aware of his obligation to pay his taxes and that failure to do so would result in penalties. At the close of the record Applicant still owed \$23,000 in overdue taxes. He has entered into an installment agreement with the IRS to pay off the debt. Applicant's supervisor considers him reliable and trustworthy and not a security risk.

We have examined the Judge's findings and conclude that they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. To the extent that Applicant has identified matters which he contends to be erroneous, some are harmless clerical errors, such as the Judge's having improperly identified a Government Exhibit as having been prepared in 2006 rather than the correct year of 2005. Other matters appear to be Applicant's disagreement with the weight the Judge attached to various pieces of evidence rather than challenges to fundamental accuracy. The record provides no basis to conclude that the Judge's material findings are an unreasonable or implausible interpretation of the evidence. *See* ISCR Case No. 04-08806 at 2 (App. Bd. May 8, 2007).

Concerning the due process challenge, we note that, at the hearing, Applicant was represented by counsel, who presented documentary evidence and witnesses on his behalf. Applicant has contended on appeal that the Judge “cut short” testimony which he believed relevant and necessary to his case. We have examined the 202-page transcript of the four-hour hearing, paying especial note to those portions which Applicant identifies as exhibiting this alleged tendency by the Judge. These instances appear to be reasonable efforts by the Judge to clarify the testimony of witnesses rather than to preclude a full and fair presentation of evidence. We note that Applicant’s attorney, at the end of the hearing, advised the Judge that “we don’t have anything further,”¹ which buttresses our conclusion that Applicant had ample opportunity to present his side of the case. In light of the record as a whole, Applicant has not met his “heavy burden of persuasion” that he was denied the due process rights secured by the Directive. *See* ISCR Case No. 03-14052 at 3 (App. Bd. Sept. 28, 2005). Furthermore, the record does not support Applicant’s contention that the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. June 2, 2006).

Order

The Judge’s decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

¹Tr. at 181.