

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to file tax returns six for six years since 2000. Adverse decision affirmed.

CASENO: 09-08505.a1

DATE: 06/14/2012

DATE: June 14, 2012

In Re:)	
)	
-----)	ISCR Case No. 09-08505
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 2, 2011, DOHA 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 March 28, 2012, after the hearing, Administrative Judge LeRoy F. Foreman 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 security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge found that Applicant did not file federal or state income tax returns for the years 2000 through 2003 and 2005 through 2008. Applicant did file his federal return in 2004, receiving a refund. When asked on the security clearance application (SCA) if he had failed to file his federal, state, or other taxes "when required by law or ordinance," he replied "no." He did not disclose the failures mentioned above. He finally filed his delinquent returns after receiving DOHA interrogatories inquiring about them.

After submitting his SCA, he told an investigator that he did not file his returns because he did not believe he needed to in years in which he owed no further tax liability. He stated that he thought the only penalty for not filing was that he forfeited his refund. At the hearing, he stated that he believed that the law did not require one to file returns in years in which no further liability was owed. He stated that he learned otherwise after reading an IRS web site. He stated that he never contacted federal or state tax authorities, nor did they get in touch with him over this issue.

He also failed to file personal property taxes on his automobile for 2003 and 2008. In each case, the taxing authority put liens on his house.

Applicant earns \$112,750 per year, and his spouse earns \$90,500 per year. His net worth is about \$258,459. He has no difficulty meeting his financial obligations and paying their taxes as required. Applicant enjoys an excellent reputation for the quality of his work performance, as well as his honesty, loyalty, and trustworthiness.

In the Analysis, the Judge found that Applicant's claim of ignorance concerning his obligation to file his tax returns was credible. He found in Applicant's favor regarding an allegation of deliberate falsehood on the SCA. However, he found that Applicant's failure to file his tax returns raised security concerns under both Guidelines E and F. He concluded that Applicant appeared to regard tax filing as an "inconvenience to be avoided." Decision at 7. The Judge noted evidence that Applicant did not file his federal returns for more than a year after discovering his obligation to do so and that he waited to file his state tax returns for more than two years after that discovery. The Judge concluded that Applicant did not credibly explain why he waited so long to meet his legal obligations. He also noted that the failures to file his returns were numerous. The Judge concluded that Applicant had failed to meet the security concerns under Guidelines E and F which were raised by his dilatory tax filings.

In support of his appeal, Applicant has submitted other Hearing Office decisions, which he contends support his case for a security clearance. As Applicant himself acknowledges, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 10-03701 at 3 (App. Bd. Mar. 14, 2012). We give these cases due consideration as persuasive authority. However, the cases which Applicant has cited have significant factual differences from his own. They do not demonstrate that the Judge’s adverse findings were arbitrary, capricious, or contrary to law.

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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, 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