

KEYWORD: Guideline E; Guideline F

DIGEST: The expectation of a tax refund is not sufficient to mitigate security concerns arising from a failure to file tax returns. Adverse decision affirmed.

CASENO: 12-00608.a1

DATE: 04/11/2014

DATE: April 11, 2014

In Re:)
)
)
 ----) ISCR Case No. 12-00608
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Amy Broderick, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 24, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial

Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 31, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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

Applicant has been employed by Defense contractors overseas for 17 years. He failed to file his Federal tax returns for tax years 2000 and 2002 through 2010 in a timely manner. He has explained this failure as a result of his belief that he did not owe taxes, due to the tax exclusion on foreign earned income. However, he has also admitted that the reason was his own procrastination.

The IRS filed a levy against Applicant for back taxes, interest, and penalties in the amount of \$789,746.07. The IRS recouped nearly that amount by attaching Applicant's investment accounts and by garnishing his pay. Although Applicant has known of his problems since around 2007 and subsequently hired a tax preparer to help him, it was not until 2013 that he gave this person the information required for him to prepare and file the returns.

Additionally, Applicant has been in a dispute with a state regarding a tax notice sent him in 2012. He has reached a resolution, requiring him to send the state a copy of his 2010 Federal tax return. As of the date of the hearing, he had not done so.

Applicant enjoys an excellent reputation among his fellow workers for conscientiousness and honesty. His colleagues believe that he can be trusted with sensitive information.

The Judge's Analysis

The Judge cleared Applicant under Guideline E. In deciding otherwise under Guideline F, the Judge stated that Applicant failed to file his taxes for "no good reason." Decision at 7. He stated that, despite Applicant's recent efforts to address his tax delinquencies, he does not have a track record of timely filing. He stated that, with virtually no history of timeliness, Applicant had failed to demonstrate that his procrastination was behind him. In the whole-person analysis, the Judge stated that the evidence did not establish permanent behavioral changes, given Applicant's long history of failing to file his tax returns.

Discussion

Applicant cites to his efforts to resolve his tax problems and to his evidence that he had honestly believed that he had not owed the IRS any money. He also argues that, because he expects to get a refund after all his returns are filed, he had a legitimate basis to dispute the debts at issue

here. This last point, even if it is true, is not sufficient to mitigate concerns arising from a failure to discharge one's legal obligation to file tax returns. See Directive, Enclosure 2 ¶ 19(g): "failure to file annual Federal, state, or local income tax returns as required . . ." The Judge made findings about Applicant's efforts to resolve his tax problems, and he discussed them in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. See, e.g., ISCR Case No. 11-13948 at 3 (App. Bd. Feb. 26, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Failure to discharge legal obligations, such as filing tax returns, can impugn an applicant's judgment and reliability. See, e.g., ISCR Case No. 98-0810 at 4 (App. Bd. Jun. 8, 2000). 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, 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 Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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