

KEYWORD: Guideline F

DIGEST: In his appeal brief, Applicant indicated that he did not recall the discussion at the hearing or in the summary of his background interview that his late tax filings started in 2011. He further states that his late filings started with his 2001 tax returns following his wife's car accident. From our reading of his brief, it is unclear what point Applicant is trying to make regarding his 2011 tax returns. We note, however, that Applicant admitted at the hearing that he failed to file his 2011 Federal and state tax returns in a timely manner. Adverse decision affirmed.

CASENO: 15-05820.a1

DATE: 06/24/2019

DATE: June 24, 2019

In Re:)
-----) ISCR Case No. 15-05820
)
Applicant for Security Clearance)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 13, 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 April 10, 2019, after the hearing, Administrative Judge Stephanie C. Hess denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As amended, the SOR alleged that Applicant failed to file his Federal and state income tax returns for 2011 through 2016 in a timely manner. The Judge found against Applicant on the two SOR allegations. She concluded that "Applicant's pattern of failing to timely file his Federal and state tax returns is recent and raises concerns about his willingness to abide by rules and regulations, and his current reliability and judgment." Decision at 9.

Applicant's appeal brief includes information not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

In his appeal brief, Applicant indicated that he did not recall the discussion at the hearing or in the summary of his background interview that his late tax filings started in 2011. He further states that his late filings started with his 2001 tax returns following his wife's car accident. From our reading of his brief, it is unclear what point Applicant is trying to make regarding his 2011 tax returns. We note, however, that Applicant admitted at the hearing that he failed to file his 2011 Federal and state tax returns in a timely manner. Tr. 12-17, 21, 68-69, and 78-79.

The main thrust of Applicant's appeal brief is that he provides a valuable contribution to national security. In the past, the Appeal Board has noted an applicant's contributions to national security are not relevant or material in assessing his or her security eligibility. *See, e.g.*, ISCR Case No. 02-11570 at 8 (App. Bd. May 19, 2004). To the extent that Applicant is requesting a waiver of the security concerns under Directive, Encl. 2, App. C, he has not shown that such an exception is merited. On this matter, we note the lack of persuasive evidence that explains "the benefit of [Applicant's] . . . continued eligibility clearly outweighs any security concerns." *Id.*

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. These arguments are not sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

Applicant has not established that 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board