

KEYWORD: Guideline F; Guideline G

DIGEST: A Judge's task is to resolve apparent conflicts in the evidence. See, e.g., ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). In light of Applicant's SOR response denying the alleged tax filing deficiencies, we conclude the Judge erred in failing to address in his decision the contradiction in the IRS tax transcripts about the filing dates and then explain how he was resolving those conflicts. Given that Applicant's remaining delinquent debts total about \$2,500, we cannot conclude a possible error in finding against Applicant on the tax filing deficiencies was harmless. Adverse decision remanded.

CASENO: 17-03024.a1

DATE: 09/06/2019

DATE: September 6, 2019

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 March 12, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 26, 2019, after considering the record, 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.

The Judge found against Applicant on SOR allegations asserting that he received a Chapter 7 bankruptcy discharge in 2017; that he failed to file his Federal income tax returns for 2013-2016 as required; that he owed about \$740 in state regional income taxes for 2013; and that he owes about \$1,700 in Federal income taxes for 2013-2016. The Judge found in favor of Applicant on two other Guideline F allegations and all of the Guideline G allegations. The Judge's favorable findings are not at issue on appeal.

In responding to the SOR, Applicant denied that he failed to file his Federal tax returns as required. On appeal, he again makes that assertion, arguing he either filed on time or before six-month extensions expired. In the decision, the Judge found that Applicant filed his 2013 Federal income tax return on May 12, 2014 with no indication an extension was granted; that he filed his 2014 return in November 2015, which was about a month after a filing extension due date; that he filed his 2015 return on December 5, 2016, which was about two months after a filing extension due date; and that he filed his 2016 return on May 29, 2017, with no indication an extension was granted.

In responding to interrogatories, Applicant submitted his IRS tax transcripts for each year in question. From our review of the IRS tax transcripts, we are unsure exactly when Applicant filed his tax returns. For example, his 2013 Federal tax transcript contains the following information:

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)	Apr. 15, 2014
PROCESSING DATE	May 12, 2014

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20141705	05-12-2014	\$5,798.00

The first two lines quoted above reflect that Applicant filed his tax return on or before April 15, 2014, which would have been an on-time filing, and the IRS processed the return on May 12, 2014. On the other hand, the bottom-quoted line apparently reflects that the return was filed on 5-12-2014, which would have about a month late absent the filing for an automatic extension. The Judge did not address this apparent conflict about the filing date in the decision. Each of Applicant's tax transcripts for the years in question contains a similar conflict.¹ We note that the IRS Master File

¹ Viewing the tax transcripts in a light most favorable to Applicant, his 2014 and 2015 tax transcripts still reflect that he filed those tax returns four days and two days after approved automatic extension due dates. Such minor filing deficiencies, however, do not raise security concerns.

Codes² indicate that Transaction Code 150 is for “Return Filed & Tax Liability Assessed,” which appears to involve the processing of the return to assess the tax owed and might explain why an amount is reflected on that transaction line and why the Transaction Code 150 date would also match the processing date for a routine individual tax return. This observation is not a finding of fact and is not binding on the Administrative Judge.

A Judge’s task is to resolve apparent conflicts in the evidence. *See, e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). In light of Applicant’s SOR response denying the alleged tax filing deficiencies, we conclude the Judge erred in failing to address in his decision the contradiction in the IRS tax transcripts about the filing dates and then explain how he was resolving those conflicts. Given that Applicant’s remaining delinquent debts total about \$2,500, we cannot conclude a possible error in finding against Applicant on the tax filing deficiencies was harmless.³

Accordingly, we remand the case for the Judge to reopen the record to provide the parties an opportunity to present evidence and address the apparent conflict in the tax transcripts about tax return filing dates and to issue a new decision in accordance with the Directive.

² <https://www.irs.gov/pub/irs-utl/6209-section-8a-2012.pdf>

³ In his appeal brief, Applicant also contends that he paid his Federal tax debt before the Judge issued the decision, but there is no evidence in the record to support that claim.

Order

The Decision is **REMANDED**.

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