

KEYWORD: Guideline F

DIGEST: In 2010, the IRS audited Applicant for 2006 and 2007 and found he and his wife owed \$129,000 in unpaid taxes, penalties, and interest. He attributed this debt to his wife's business and a tax preparer's errors. He failed to file his 2010-2015 Federal tax returns in a timely manner. Applicant contends that the Judge did not consider all of the record evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. For example, he highlights that he has filed his tax returns for 2010-2015, timely filed his tax returns for 2016 and 2017, and established a payment plan for his tax debt through his Chapter 13 bankruptcy. The Judge, however, made finding about those matters and discussed them in her analysis. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-02583.a1

DATE: 01/11/2019

DATE: January 11, 2019

In Re: _____)
-----) ISCR Case No. 17-02583
Applicant for Security Clearance)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 19, 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 decision on the written record. On October 22, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is 56 years old, has held a security clearance for about 18 years while working for defense contractors. He is married with three children. He admitted the SOR allegations. In a 2014 background interview, he attributed his financial problems to a loss of his wife's income around that time.

In 2010, the IRS audited Applicant for 2006 and 2007 and found he and his wife owed \$129,000 in unpaid taxes, penalties, and interest. He attributed this debt to his wife's business and a tax preparer's errors. He failed to file his 2010-2015 Federal tax returns in a timely manner because his wife did not receive the necessary documents on time. Those tax returns were eventually filed. He timely filed his 2016 and 2017 Federal tax returns. He owes the IRS about \$15,700 for 2015, \$14,000 for 2016, and \$12,000 for 2017. He stated that he owes his state about \$3,300 for all years through 2015 and owes it about \$3,100 for 2016 and \$3,500 for 2017.

In 2015, Applicant filed Chapter 13 bankruptcy. It required him to make monthly payments of \$4,500. After making about eight payments and petitioning to reduce the amount of the monthly payments, the bankruptcy was dismissed. In late 2016, he again filed Chapter 13 bankruptcy. His monthly payments were reduced to \$2,835. His bankruptcy liabilities total over \$286,000, including over \$177,000 in unpaid Federal and state taxes. Insufficient evidence was provided to establish that his unpaid Federal and state taxes for 2016 and 2017 are being resolved.

The Judge's Analysis

Applicant did not provide a legitimate explanation for his tax filing deficiencies. His failure to file Federal income tax returns in a timely manner for six years casts doubt on his current judgment and reliability. Although he is making bankruptcy payments to address unpaid taxes, no evidence has been presented that he is resolving or paying his unpaid Federal and state taxes for 2016 and 2017.

Discussion

Applicant contends that the Judge did not consider all of the record evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. For example, he highlights that he has filed his tax returns for 2010-2015, timely filed his tax returns for 2016 and 2017, and established a payment plan for his tax debt through his Chapter 13 bankruptcy. The Judge, however, made finding about those matters and discussed them in her analysis. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3-4 (App. Bd. Aug. 30, 2018). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* Additionally, the Judge complied with the requirements of the Directive in her whole-persons analysis by considering the totality of the evidence in reaching her decision.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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 Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board