

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant contends that the omission of his tax filing deficiencies on his SCA was not deliberate. He argues that he did not remember not filing his taxes for the years in question. In this regard, we note that Applicant has not challenged any of the Judge's findings of fact pertaining to the falsification allegation. A falsification, even in the face of an applicant's denial of such conduct, can be established through circumstantial evidence. Adverse decision affirmed.

CASENO: 18-00428.a1

DATE: 02/14/2019

DATE: February 14, 2019

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In Re: \_\_\_\_\_ )  
----- ) ISCR Case No. 18-00428  
 )  
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 April 19, 2018, 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 June 1, 2018, Department Counsel amended the SOR, which included the addition of an allegation under Guideline E (Personal Conduct). On December 14, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 32 years old, has been working for a defense contractor since 2016. He served in the military for about nine years and received an honorable discharge in 2013. After his discharge, he experienced periods of unemployment.

The SOR alleged that Applicant failed to file some of his Federal income tax returns in a timely manner. He filed his 2009 Federal tax return in January 2011, his 2011 return in September 2018, and his 2014 return in July 2017. He filed his other Federal income tax returns for 2007 to 2017 in a timely manner, but owed an additional \$5,000 in Federal taxes for 2013.<sup>1</sup> His subsequent Federal tax refunds were applied to his 2013 tax deficiency, which is resolved. Applicant also resolved two other alleged debts. Because he was unable to obtain his W-2 for 2011, he had not filed his 2011 state income tax return as of the date of the hearing.

In his 2016 security clearance application (SCA), Applicant failed to disclose that he did not timely file his Federal and state income tax returns for 2011. He indicated that he had forgotten that he did not file his tax returns when he completed his SCA. During a background interview in 2017, he disclosed that did not timely file his 2013 Federal income tax and had paid his 2013 tax debt in 2017. He did not disclose during that interview that he failed to file his Federal and state income tax returns for 2011. At the hearing, he could not remember why he did not disclose during that interview his 2011 tax filing deficiencies.

### **The Judge's Analysis**

Applicant admitted he failed to file his 2009, 2011, and 2014 Federal income tax returns and his 2011 state income taxes as required. He experienced conditions beyond his control and is credited with resolving some of the Guideline F allegations. However, his repeated failures to file some of his tax returns in a timely manner are not mitigated.

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<sup>1</sup> The Judge made inconsistent findings by mistakenly stating that Applicant's 2014 Federal income tax return was filed in a timely manner.

Applicant's deliberate omitted information from his SCA. His explanation about forgetting that he did not file timely his tax returns was not credible. He could not remember why he did not disclose to the investigator that he had not filed his Federal income tax return for 2011.

## Discussion

Applicant contends that the omission of the his tax filing deficiencies on his SCA was not deliberate. He argues that he did not remember not filing his taxes for the years in question. In this regard, we note that Applicant has not challenged any of the Judge's findings of fact pertaining to the falsification allegation. A falsification, even in the face of an applicant's denial of such conduct, can be established through circumstantial evidence. *See, e.g.*, ISCR Case No. 00-0044 at 3 (App. Bd. Dec. 22, 2000). Additionally, we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018). From our review of the record, the Judge's material findings about the falsification allegation are based on substantial record evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant failed to establish that the Judge erred in concluding that he falsified his SCA.

In referencing the Judge's adverse finding regarding SOR ¶ 1.d, Applicant stated:

The statement of reason[s] said that I had failed to file, as required, my federal tax return for tax year 2014. My federal and state tax returns were filed and completed before the hearing. Again, I had admitted to the statement of reason[s] since the S.O.R. stated "in a timely fashion". But again, was removed with the S.O.R. that was attached to the hearing findings.<sup>2</sup>

As best we can discern, Applicant is claiming the copy of the SOR attached to the Judge's decision did not contain a copy of the SOR amendment. We note the SOR amendment did not modify SOR ¶ 1.d, which reflected he did not file his 2014 Federal tax return "as required." Applicant's contention regarding SOR ¶ 1.d does not demonstrate any error.

The balance of Applicant's arguments are a disagreement with the Judges weighing of the evidence. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient 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 (App. Bd. Aug. 30, 2018).

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, Enclosure 2 ¶ 2(b): "Any doubt

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<sup>2</sup> Appeal Brief at 1.

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