

Judge failed to consider his post-traumatic stress disorder (PTSD) as a source of his confusion during the hearing. He also asserted that the Judge did not properly weigh his resolved debts, consider the age of his debts, and his belief that he may have been a victim of financial fraud when applying the mitigating conditions.

Judge's Findings and Analysis

Applicant is in his early 30s and employed by a defense contractor. He previously served honorably in the military and twice deployed to Afghanistan. He is rated as 70% disabled by the Department of Veterans Affairs and was diagnosed with PTSD after incurring an injury during one of the deployments. He was divorced in 2018 and remarried the same year. He has two children from his first marriage that live with him.

Applicant provided contradictory statements with regard to the status of his 2017 Federal income tax return. He claimed that he filed his 2017 return in 2018. However, during his personal subject interview (PSI) by a government investigator in March 2019, Applicant admitted that he had not filed his 2017 tax return but planned to do so by the end of March 2019. He was again interviewed in October 2019 and stated that he still had not filed the 2017 return because he was gathering necessary documents. He said he filed his 2018 return and was audited by the Internal Revenue Service (IRS) who determined that he owed a penalty for withdrawal of funds from his Thrift Savings Plan (TSP).

The Judge found that the 2018 IRS tax transcript showed that Applicant's income tax return for that year was filed in March 2019, and an amended return was filed in September 2019. In testimony, Applicant said he filed his 2017 tax return in late 2018 or early 2019. He presented a 2018 IRS tax account transcript, but not one for tax year 2017. In a post-hearing submission, Applicant expressed his inability to obtain his 2017 account transcript from the IRS, but presented a 2017 wage and income transcript as proof that he filed his 2017 return and paid a penalty. The Judge noted that the wage and income transcript did not state whether a tax return had been filed. Decision at 2, 3.

The Judge concluded that Applicant provided inconsistent explanations about his 2017 Federal tax return and surmised that Applicant had confused his 2017 tax year with his 2018 tax year return. The Judge held that Applicant failed to carry his burden to show that he filed his 2017 Federal income tax return, and therefore suggested a problem with abiding by well-established government rules and systems. In addition, the Judge found in Applicant's favor for most of the alleged debts, often giving Applicant the benefit of the doubt, but held that two debts in collections for \$1,896 and \$986 were not resolved.

The Judge noted that Applicant thought he closed the account to a telecommunications company for which he owed \$1,896, paid the debt, and disputed the account. The Judge found that the account was listed as an individual account with the last activity in 2017, and that his credit report did not note a dispute on the account. The other debt for \$986 resulted from Applicant financing a computer in 2015. Applicant said he did not pay the debt and agreed it likely fell off his credit report due to age. Decision at 3, 4.

The Judge noted that Applicant's case was "disjointed and often inconsistent," and that Applicant admitted that he was at times confused, possibly related to his PTSD. Decision at 9. The Judge also noted Applicant's letters submitted on his behalf and said Applicant "provided an eloquent plea to retain his security clearance" in addressing his patriotism, disability, and unquestioned military service. Decision at 5.

Discussion

On appeal, Applicant admitted that he did not file his 2017 Federal income tax return when it was due, but argues that he told the Judge that he filed his 2017 and 2018 income tax returns in March 2019. He contends that the Judge's decision attempts to show him as a liar, and that his memory loss may result from his PTSD. He then reasserts all of the favorable findings in the record to argue that the Judge should have found in his favor. Applicant's assertion that the Judge failed to weigh the evidence appropriately or consider all of the relevant evidence, including Applicant's PTSD condition, is without merit.

In his Answer to the SOR, Applicant admitted he did not file the tax return on time but argued that he was transitioning from the Army and did not have the necessary documents to file the return. His assertion on appeal that he filed his 2017 tax return in March 2019 is not supported by persuasive record evidence, as he merely reasserts substantially the same information that was presented to the Judge. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. Regardless, failure to file and pay taxes when due raises a concern that a person may be lacking in the reliability and judgement necessary for the protection of classified information. *See, e.g.*, ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017).

Applicant next asserts that payment of his delinquent credit card accounts and other debts shows the progress he is making toward repairing his credit status. He also argues he was a victim of fraud, divorced, and that his PTSD may have prevented him from resolving the debts, including the credit card debt alleged in SOR ¶ 1.f. The Judge found in favor of Applicant on most of the debts, including the debts he raised in his appeal, but found that two other debts in collections that Applicant had not provided evidence of voluntary payments, were not mitigated. Applicant stated in his answer to the SOR that these two debts the Judge found were unresolved, were "due to the spoils of divorce," and that he was "seeking resolution with this account." Nothing in Guideline F indicates that there is any particular threshold amount of delinquent or otherwise unresolved debts that must be reached before an applicant's financial difficulties raise security concerns. *See, e.g.*, ISCR Case No. 15-05289 at 2 (App. Bd. Jan. 12, 2017), *citing* ISCR Case No. 02-10168 (App. Bd. Aug. 1, 2003). It is well established, however, that an applicant's ongoing, unpaid debts demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.*, ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

Finally, the evidence is clear that the Judge adequately considered Applicant's personal circumstances and his PTSD condition, specifically noting his military service and "particularly his combat deployments," and said Applicant is "on the right track financially, but for whatever reason, he did not provide documents that might have been able to mitigate the security concerns." Decision at 9.

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* AG ¶ 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: James F. Duffy

James F. Duffy
Administrative Judge
Chair, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board