



The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 30, 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 decision on the written record. On December 21, 2018, after considering the record, Administrative Judge Robert J. Kilmartin 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 and Analysis**

Applicant is a retired military officer. He has been employed by Federal contractors since 1995, but experienced a period of unemployment from May to July 2009. He is married with three adult children.

In his 2017 security clearance application, Applicant disclosed that his failure to pay Federal income taxes resulted in a tax lien of approximately \$20,000 in 2005. He indicated that he always filed his Federal and state income tax returns on time, but was unable to pay all taxes due to expenses associated with multiple college tuition payments. The tax lien was released when he initiated a repayment plan with the IRS.

In a background interview, Applicant stated he had been “negotiating repayment plans with, and making payments for unpaid taxes, to the IRS for approximately 15 years.” Decision at 2, quoting from Item 4, page 6. He believed his Federal tax liens were for his 2008-2010 taxes. He confirmed a 2007 Federal tax lien for about \$23,000 and a 2011 Federal tax lien for about \$49,000. He claims the latter lien was satisfied, but provided no documentary evidence.

As of August 2018, Applicant’s tax transcripts for 2009 and 2010 reflected his total indebtedness was \$22,053. His adjusted gross income for 2009 and 2010 was about \$234,000 and \$263,000, respectively. The Judge found:

Applicant had repayment plans with the IRS for many years and he was chronically delinquent in paying his federal taxes going back to the mid-1990's. He has been in full compliance with various repayment plans for almost two decades, but has provided no evidence of why he was required to enter into repayment plans in the first place. All of his income taxes prior to 2009 and after 2010 have been paid in full. All of his children’s student loans have been paid off successfully, and Applicant chose to pay those debts before his income taxes.<sup>1</sup>

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<sup>1</sup> Decision at 3.

Applicant produced no evidence that he received financial counseling. His monthly income is about \$13,700 while his expenses range from about \$6,800 to \$8,800. His taxes remained unpaid despite having a residuary monthly income of several thousand dollars.

Applicant's tax transcripts reflected a continuous stream of payments to the IRS for only a finite period. It is unclear why his 2009 and 2010 delinquencies have not been satisfied. The record indicates he chose to pay for automobiles and his children's education ahead of his taxes. He repeatedly demonstrated bad judgment. There is insufficient evidence to conclude his financial problems are under control.

## **Discussion**

In his appeal brief, Applicant challenges the SOR allegations as well as various findings and conclusions in the Judge's decision. In doing so, Applicant makes assertions in his brief that are not supported by the record evidence. For example, he contends that he owes only \$439 in past due taxes plus interest and penalties for 2009. However, the most recent IRS tax document in the record does not support that contention. As of August 2018, his 2009 tax transcript reflected that he owed the IRS a balance of about \$7,034 (\$3,555 in past due taxes, \$2,067 in interest, and \$1,411 in penalties). Applicant's Response to File of Relevant Material. Additionally, his appeal brief states that he mailed a payment to the U.S. Treasury of \$14,000 on "23 January" (presumably, 2019) for all his past-due taxes, but there is no evidence reflecting that payment in the record. His unsupported assertions constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. From our review of the record, the Judge's material findings and conclusions are based on substantial evidence or constitute reasonable inferences that could be drawn from the record. *See, e.g.,* ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

The remainder of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. Applicant argues, for example, that his tax deficiencies are being resolved through a repayment agreement. A Judge should consider not only the extent to which an applicant's delinquent taxes have been resolved or are being resolved, but also the circumstances underlying those debts that reflect negatively on his or her judgment and reliability. *See, e.g.,* ISCR Case No. 14-03392 at 3 (App. Bd. Apr. 15, 2015). In this case, Applicant has longstanding Federal tax delinquencies that remain unresolved even though he has substantial income. Applicant's arguments are not sufficient to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

Applicant has failed to establish that the Judge committed any harmful error. 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 failing to pay 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, 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