



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

DATE: January 21, 2022

In the matter of:)	
)	
)	
-----)	ISCR Case No. 20-02064
)	
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 January 4, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Consideration) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 19, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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

The SOR alleged that Applicant had failed to file her Federal and state income tax returns for tax years 2010 through 2019; that she owed tax to both the Federal and state tax authorities for tax years 2012 through 2015; and that she had two delinquent accounts owed to banks. The Judge found for Applicant on one of the bank debts and entered adverse findings regarding the remaining SOR allegations. The Judge cited to Applicant's response during her clearance interview that she "never got around" to filing her tax returns. Decision at 3. He also cited to her explanations for her tax delinquencies, such as her inability to find assistance in preparing her returns and an ongoing history of social anxiety. Applicant conceded that she had no good reason for not having filed her returns. The Judge noted Applicant's testimony that she had filed her returns during the week prior to the hearing, although he stated that she did not provide documentary corroboration for any returns other than those for tax year 2020.

The Judge made findings regarding inconsistent statements Applicant had made, such as an earlier claim in her 2020 interrogatory response that she had filed her tax returns, followed by an admission on the following page of the response that she had yet to mail the returns to the tax authorities. He noted her testimony that she had experienced unemployment, comparing it with her security clearance application in which she listed no periods of unemployment during the previous 10 years.

The Judge resolved the larger of the two bank debts in Applicant's favor. However, he cited to evidence that Applicant had been aware for years that her tax returns were delinquent but did not present documentary evidence of having filed any of them except for tax year 2020, which she filed after the hearing. He concluded that her explanations for her conduct were not sufficient and cited to Applicant's inconsistent statements regarding her employment status. The Judge held that Applicant had failed to mitigate the concerns raised in the SOR.

Discussion

Much of Applicant's brief provides context for her financial problems, for her inability to corroborate that she had filed her tax returns, and for her inconsistent statements. Her arguments contain matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. She states that if she loses her clearance she will not be able to continue with treatment for her anxiety disorder, which she has cited as a cause of her tax procrastination. The Directive does not permit us to consider the impact of an adverse decision. *See, e.g.,* ISCR Case No. 17-03024 at 3 (App. Bd. Jan. 9, 2020). Applicant's arguments are not sufficient to show that the Judge's decision was arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

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, 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: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board