



**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: February 2, 2022

In the matter of:)
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-----) ISCR Case No. 19-04043
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Applicant for Security Clearance)
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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 10, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On November 29, 2021, after conducting a hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Candace Le'i Garcia denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged that Applicant failed to pay Federal and state income taxes as required for 2010-2012, that he failed to file and pay Federal and state income taxes as required for 2013-2018, that he owed about \$40,000 in delinquent Federal and state taxes, and that he had four other delinquent debts totaling about \$14,000. Under Guideline E, the SOR alleged that Applicant was terminated from a job in 2014 for unacceptable behavior involving inappropriate touching of company and non-company employees. The Judge found against

Applicant on the three tax allegations and the Guideline E allegation, and she found in favor on the remaining debt allegations.

In his appeal brief, Applicant does not challenge any of the Judge's findings of fact. Rather, he contends the Judge's decision was based upon a lack of consideration of his consistent payments on his revolving credit over the past five years leading to full repayment of all but one of those accounts. This contention need not be addressed because the Judge found in favor of him on the allegations involving the non-tax debts.

In her decision, the Judge found that, although Applicant "completed" the delinquent Federal and state income tax forms in June 2021, "he had yet to mail them to his spouse for her signature, which was required before filing them." Decision at 3. We are unable to discern what Applicant now means by stating in his brief that his "federal and state income taxes have been all completed[.]" Appeal Brief at 1. To the extent he is contending the delinquent tax returns have been filed, such a statement constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. For example, Applicant argues that he is working with the IRS and state tax authority to determine a repayment plan for the delinquent taxes and that his "character subsequent to the single incident of inappropriate touching in 2014 has been exemplary[.]" Appeal Brief at 1. None of his arguments are sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02592 at 5 (App. Bd. Jan. 6, 2021).

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief. 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*, Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security."

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira D. Modzelewski
Moira D. Modzelewski
Administrative Judge
Member, Appeal Board