

Date: March 24, 2022

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In the matter of:)	
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-----)	ISCR Case No. 19-01494
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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 August 5, 2019, 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 September 9, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 contained fourteen allegations, the Judge finding against Applicant on seven of them. The adverse findings pertained to a 2011 discharge in bankruptcy; failure to file a Federal income tax return for tax year 2016; debts to the IRS for delinquent income taxes for tax years 2015 and 2018; and three consumer debts totaling about \$3,400. The Judge found that Applicant had been denied a security clearance in 2016 due to delinquent debts. Applicant attributed the financial problems alleged in his current SOR to a divorce. Documentary evidence supplied by Applicant showed that he owed about \$4,500 for tax year 2018; about \$5,600 for tax year 2016, which was not alleged in the SOR; and about \$6,300 for tax year 2015. Applicant did not begin to address his IRS problems until 2018. As of the month following the hearing, Applicant's IRS debts were still unresolved. The Judge stated that she would consider non-alleged conduct solely in evaluating Applicant's case for mitigation, his credibility, and in performing a whole-person analysis. She found that one of the remaining debts was resolved through wage garnishment and that he had not provided evidence to substantiate his claims about resolving some debts.

The Judge characterized Applicant's debts as ongoing, stating that his financial condition continues to cast doubt on his reliability, trustworthiness, and good judgment. She noted the timing of Applicant's efforts at resolving his tax problems, concluding that he did not demonstrate that he had acted responsibly in regard to them. She noted that Applicant did not provide evidence of an existing payment plan with the IRS and that he has not had financial counseling. The Judge concluded that after considering the entirety of the record, she was left with questions and doubts about Applicant's eligibility for access to classified information.

Discussion

In his Appeal Brief, Applicant states the following:

This application started in 2017 and has continued through 2022. This is a long time lapse to judge someone on their financial issues from 2011 to 2018. I believe the court should have only allowed current financial concerns. If I was judged on my current financial situation, the only negative findings would be that I owe back taxes which I'm on an installment plan to repay with the IRS. [Appeal Brief at 1.]

We construe this argument as contending that the Judge did not properly perform a whole-person analysis, devoting too much attention to conduct that began over ten years ago and devoting too little to his current financial condition.

The concern under Guideline F is that failure to "meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Directive, Encl. 2, App. A ¶ 18. The Directive requires that, in evaluating an applicant's security eligibility, the Government examine "a sufficient period of time . . . to make an affirmative determination that the individual is an acceptable security risk." *Id.* at ¶ 2(a). To that end, a Judge should take into account all aspects of the record evidence

bearing upon the applicant's trustworthiness and reliability. *See, e.g.*, ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

We note that the Judge found that many of Applicant's debts had been resolved, and she entered favorable conclusions regarding them. However, her findings that Applicant's IRS debts remain owing and that he did not corroborate his claims to be paying them off are consistent with the record that was before her, undercutting Applicant's appeal argument that his current financial condition is demonstrably stable. Moreover, even though several of Applicant's debts have been resolved, the Judge was still authorized to consider the underlying circumstances of Applicant's financial problems in determining whether he had mitigated the concerns set forth in the SOR. *See, e.g.*, ISCR Case No. 17-02599 at 3 (App. Bd. Jan. 18, 2019) (Even if an applicant has actually paid his debts, or they have been removed through a legal process such as bankruptcy, a Judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance). That Applicant has had financial problems for many years; that he had previously been denied a clearance because of Guideline F concerns, which should have placed him on notice of the importance of financial stability to his eligibility for a clearance; and that several of his debts—including those owed to the IRS—were still owing as of the close of the record support her overall analysis. Applicant has not demonstrated that the Judge's whole-person analysis was deficient.

The balance of Applicant's arguments consists, in effect, of a disagreement with the Judge's weighing of the evidence. These arguments are not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law nor to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 21-00734 at 2 (App. Bd. Mar. 2, 2022).

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