

Date: March 31, 2022

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In the matter of: )  
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Applicant for Security Clearance )  


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ISCR Case No. 19-03098

**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 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. At the hearing the SOR was amended to expand the time frames and amount alleged and to add an additional Guideline F allegation. On November 18, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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.

As a preliminary matter, we note that the Judge failed to make a formal finding regarding SOR 1.d. This appears to have resulted merely from oversight and has not been raised as an issue on appeal. We simply point out that Judges are required to address all of the allegations in a SOR. Directive ¶ E3.1.25; *see also* ISCR Case No. 08-07803 at 2 (App. Bd. Sep. 21, 2009).

The Judge found that Applicant failed to file his Federal and state income tax returns from 2012 until 2016; that he owed the IRS just under \$700,000; and that he owed his state taxing authority about \$260,000. The Judge also found Applicant's explanations for his problems to be inconsistent. Federal and state authorities issued levies against Applicant's income in satisfaction of his tax delinquencies, but Applicant himself did not engage in formal efforts to resolve his problems until after he had been served with interrogatories. Applicant cited to no circumstances beyond his control that impaired his ability to file returns and pay taxes. The Judge concluded that Applicant's track record regarding his tax obligations "is extremely poor at best." Decision at 12.

Applicant's brief includes information from outside the record, which we cannot consider. *See* Directive ¶ E3.1.29 ("No new evidence shall be received or considered by the Appeal Board.").

Applicant cites to his having held a clearance for many years without incident or concern. The Judge made findings about Applicant's clearance history, his military service, and the favorable character references attesting to his excellent work record and his trustworthiness. However, the government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. Even those with good prior records can encounter circumstances in which their judgment and reliability might be brought into question. *See, e.g.*, ISCR Case No.18-02581 at 4 (App. Bd. Jan. 14, 2020). Indeed, persons who fail to abide by legal obligations, such as filing tax returns and paying tax obligations when due, may be lacking in the qualities expected of those with access to classified information. *See, e.g.*, ISCR Case No. 17-01256 at 3 (App. Bd. Aug. 3, 2018). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020).

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