



**DEPARTMENT OF DEFENSE  
DEFENSE LEGAL SERVICES AGENCY  
DEFENSE OFFICE OF HEARINGS AND APPEALS  
APPEAL BOARD  
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Date: March 24, 2022

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In the matter of: )  
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----- ) ISCR Case No. 19-03645  
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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 June 22, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive) and the adjudicative guidelines (AG), which became effective on June 8, 2017. Department Counsel requested a hearing. On January 5, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged two financial concerns under Guideline F—that Applicant failed to file her federal income tax returns for tax years 2010 through 2018 and that she failed to file her state income tax returns for those same years. The Judge found against Applicant on both allegations.

**Judge's Findings of Fact:** The Judge's factual findings are summarized below, in pertinent part:

Applicant is in her early sixties. She is married and the guardian for a minor grandchild. For tax years 2010 through 2018, Applicant did not file her federal and state returns on time as required. For tax year 2010, she and her husband filed a return in 2013, after the IRS filed a substitute return. They had a taxable income of \$285,000, paid no taxes on the income during the tax year, and paid no taxes upon filing. Applicant disputes the amount of her 2010 tax liability, claiming that their actual income was instead about \$220,000. By July 2021, the 2010 federal tax debt had grown, with interest and penalties, to \$223,400. For tax years 2011–2018, Applicant failed to file until at least early 2020.

Applicant attributes her tax issues to a series of events beginning in 2008 that included: intermittent unemployment; legal guardianship of her grandchild; multiple deaths in her immediate family, with attendant funeral and travel costs; a burglary of her home; her husband's stroke; vehicle accidents; and the recent illness of a sibling.

Around 2019, following her second clearance interview, Applicant retained a tax attorney to assist in filing overdue returns and negotiating an installment agreement. Applicant asserted that she has now filed her state and federal income tax returns for 2011 through 2019. She submitted various tax documents that indicate she has recently filed for tax years 2013 through 2019 with both Federal and state tax authorities. It appears that Applicant owes for several of those tax years (approximately \$7,800 in additional Federal tax debt and approximately \$2,100 in state tax debt). She has not submitted any supporting documents for tax years 2011 and 2012.

**Judge's Analysis:** The Judge's analysis is quoted below, in pertinent part:

Applicant went through an extremely difficult period, and those events were beyond her control. The real question is whether she acted responsibly under the circumstances.

[Applicant] asserted that her tax liability for 2010 is greatly exaggerated because she received an inaccurate IRS Form 1099, and that her actual income was about \$220,000. She would receive more credit for that statement if she had paid any of the taxes from 2010. From 2010 to the present, Applicant has paid nothing for her 2010 federal income taxes. . . . She currently owes the IRS more than \$230,000 for tax years 2010, 2015, 2017, and 2019. Her liability for her state income taxes and her federal income taxes for years 2011 and 2012 is unknown. Applicant has not acted responsibly under the circumstances. AG ¶ 20(b) [the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances] is not applicable. AG ¶ 20(g) [the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements] is applicable

to the filed income tax returns. It is not applicable to the returns that have not been filed and the federal income taxes that have not been paid. [Decision at 5–6.]

### **Discussion**

On appeal, Applicant does not challenge any of the Judge’s material findings. She does, however, challenge his conclusion that she has not mitigated the security concerns, asserting that “I mitigated my Tax situation by hiring a Tax Attorney as soon as possible . . . .” Appeal Brief at 1. However, the fact that an Applicant retains an attorney and files delinquent tax returns does not compel a Judge to issue a favorable decision. The Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of both AG ¶ 20(b) and AG ¶ 20(g). *See, e.g.*, ISCR Case No. 17-01807 at 3–4 (App. Bd. Mar. 7, 2018). Moreover, Applicant failed to produce any evidence that she has made arrangements with the IRS to begin payments on her sizeable federal tax debt, much less that she has begun payment on that debt. Her argument that she has mitigated her tax delinquencies by hiring a tax attorney is not persuasive.

Additionally, Applicant reiterates the personal and family difficulties that have beset her over the past ten years—evidence that was before the Judge and included in his decision. To the extent that Applicant is arguing that the Judge misweighed that evidence, her arguments are not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Even if Applicant’s financial difficulties initially arose due to circumstances beyond her control, the Judge may still consider whether Applicant has since acted in a reasonable manner when dealing with those difficulties. *See, e.g.*, ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005).

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