



**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: June 3, 2022

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 27, 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). Applicant requested a hearing. On March 23, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 SOR alleged that Applicant failed to file his Federal income tax returns for 2012-2015 in a timely manner; that he owed the Federal Government about \$14,000 in unpaid taxes for 2012; and that he had six other delinquent debts. The Judge found against Applicant on the two tax

allegations and in favor of him on the other allegations. Applicant worked overseas in 2012 and 2013 and provided his wife a power of attorney for her to file their tax returns in his absence, but she felt uncomfortable doing so. He filed his Federal tax returns for 2012-2015 in 2019. He owed unpaid Federal taxes for 2014 and 2015 and made payments towards those taxes in 2020. In late 2020, he received an IRS notice of intent to seize property unless he paid about \$2,300 for his 2015 taxes. He made that payment in August 2021. After the DOHA hearing in November 2021, Applicant paid the IRS over \$19,000 for his 2012 taxes, over \$12,000 for his 2013 taxes, and about \$600 for his 2020 taxes. The Judge concluded:

Applicant has a long history of financial irresponsibility. He has had debt accumulation and a history of avoidance of tax obligations to include an inability or unwillingness to comply with income tax filing requirements and payment of taxes owed. He has shown little concurrent effort to resolve his financial obligations until his security eligibility was in jeopardy. He has not submitted sufficient or persuasive evidence to show how his service overseas significantly impeded his ability to file federal income tax returns and pay taxes as required. [Decision at 6.]

On appeal, Applicant does not challenge any of the Judge's specific findings of fact but argues, "How the Judge finds there is a potential for pressure, coercion, exploitation, or duress is not stated." Appeal Brief at 6. The Judge, however, made no finding or conclusion of that nature.

Applicant contends the Judge did not consider all of the evidence, misapplied the mitigating conditions, mis-weighted the evidence, and erred in his whole-person assessment. None of Applicant's arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-03363 at 3 (App. Bd. Nov. 29, 2018). The Hearing Office cases that Applicant cites in support of his arguments are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* They are easily distinguishable from the present case and do not provide a reason to conclude the Judge erred in his analysis or conclusions.

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. 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: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

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