

Date: June 2, 2022

In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 20-03185

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 December 16, 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, which was held on January 25, 2022. On March 8, 2022, after the record closed, 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.

The SOR alleged that Applicant received a Chapter 7 bankruptcy discharge in 2006; failed to file his Federal and state income tax returns for 2014, 2015, and 2017 in a timely manner; owed over \$34,000 in delinquent Federal taxes for 2014, 2015, and 2017-2019; owed about \$2,000 in delinquent state taxes for 2015; and had seven other delinquent debts totaling about \$6,300. In responding to the SOR, he admitted each of the allegations with explanations. The Judge found in favor of Applicant on his 2017 Federal tax indebtedness because he was entitled to a foreign exemption for that year and found against him on the remaining allegations. In her analysis, the Judge concluded in pertinent part:

Applicant repeatedly failed to pay his delinquent debts and timely file and pay his federal and state income taxes for multiple years. His financial irresponsibility was ongoing, frequent, and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial issues to a period of unemployment in 2014 and his belief he was to receive a foreign exemption for certain tax years. His unemployment was beyond his control. I also find that his confusion over his foreign exemption status was complicated, and he had difficulty understanding its applicability. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not. He failed to pay any of his debts that became delinquent in 2014 and 2015 until 2021. He also continued to ignore his responsibility to timely file his tax returns and, if he was unable to pay, to contact the IRS to participate in a repayment plan. AG ¶ 20(b) has minimal application.

Applicant sought the assistance of [tax relief service] to help him resolve his tax issues. In 2021, he participated in a repayment plan with the IRS. After his hearing, he provided documents to show that he made payments to the IRS that were being processed to resolve the outstanding balances on multiple tax year debts. . . . AG ¶¶ 20(c) and 20(g) apply. Applicant's failure to address his delinquent debts for years and then finally paying them does not constitute a good-faith effort to repay his overdue creditors, but rather reflects a last ditch effort to resolve them after receiving the SOR. AG ¶ 20(d) does not apply. [Decision at 9-10.]

. . .

Applicant has a long history of financial problems beginning when he filed Chapter 7 bankruptcy and had his debts discharged in 2006. It is noted that his bankruptcy documents reflected a tax liability of more than \$15,000 at the time. Applicant's 2014 unemployment impacted his finances, but his repeated failure to timely file and address his tax debts continued beyond that period. After completing his [security clearance application] in April 2019, he began to address them.

Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay his federal income taxes raises serious concerns. The evidence shows that Applicant has likely paid all or most of his tax debts and his delinquent debts. However, he also has an unreliable financial track record. His failure to address his delinquent debts for years and failure to comply with timely filing and paying his income taxes is a serious concern. Although it appears his delinquent debts and federal and state taxes are now paid, it does not negate his past irresponsible conduct and noncompliance with his legal obligations. These facts cannot be ignored. Therefore, considering all of the evidence, and despite some mitigation, it is insufficient to fully mitigate the financial considerations security concerns. [Decision at 11.]

Applicant has not challenged any of the Judge’s specific findings of fact. Rather, he contends the Judge erred by not considering all of the circumstances he confronted and by failing to apply the whole-person concept properly. For example, Applicant argues that the Judge failed to properly weigh his periods of unemployment, his attempts to mitigate the situation by returning to overseas employment, and his unexpected loss of the foreign earned income exclusion for tax years 2016 and 2018.

Contrary to Applicant’s argument, our review of the record and the Judge’s decision confirms that the Judge considered all the evidence presented, including those circumstances cited by Applicant in his appeal. In her decision, the Judge thoroughly explored all mitigating conditions under Guideline F before concluding that, although AG ¶¶ 20(c) and 20(g) apply, Applicant failed to fully mitigate the security concerns raised. Moreover, the Judge’s whole-person analysis is well grounded in the appeal board precedent to which she cites.

As the Judge noted in her decision, failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules, raising questions as to whether he will comply with the rules for protecting classified information. Decision at 11, citing ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). The fact that Applicant has recently corrected his Federal and state tax problems does not preclude careful consideration of Applicant’s longstanding prior behavior and how it reflects on his security worthiness. *See, e.g.*, ISCR Case No. 12-05053 at 4–5 (App. Bd. Oct. 30, 2014). Moreover, as the Judge noted, the timing of Applicant’s efforts to resolve his debts is relevant, as an applicant who begins to resolve financial concerns only after his clearance is in jeopardy may lack the judgment to follow rules and regulations when his personal interests are not threatened. Decision at 11, citing ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Applicant requests that the case be remanded to the Judge for reconsideration. The Appeal Board has no authority to remand a case for further proceedings unless it identifies an error below that needs correcting. Directive ¶ E3.1.33.2. We have not identified any such error. Applicant also presents additional IRS documents, but the Appeal Board is prohibited from considering new evidence on appeal. Directive E3.1.29.

Applicant has 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