

Date: August 10, 2022

In the matter of:)
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Applicant for Security Clearance)
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ISCR Case No. 20-03789

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 February 20, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for 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 May 13, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the decision.

The SOR alleged that Applicant had two delinquent vehicle loans totaling over \$23,000, that he had eight delinquent student loans totaling over \$120,000, and that he failed to file his Federal and state income tax returns for 2013 and 2014 as required. The Judge found in favor of Applicant on a vehicle loan totaling about \$7,700 and against him on the remaining allegations. In summarizing the case, the Judge stated:

Applicant’s financial hardships arose from a period of unemployment, significant medical expenses for his wife and special-needs child, and additional

expenses for his child's care. Notwithstanding these hardships, Applicant failed to demonstrate good judgement and reliability in fulfilling his financial obligations to timely file his tax returns and to address his delinquent debts. Applicant's recent debt-resolution efforts do not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied. [Decision at 1.]

There is no presumption of error below, and the appealing party has the burden of raising and demonstrating the Judge committed harmful factual or legal error. *See, e.g.*, ISCR Case No. 00-0339 at 3 (App. Bd. Mar. 22, 2001). In this case, Applicant has failed to meet that burden.

Applicant argues that the "possible indicators" of security concern under Guideline F—excessive gambling, mental health conditions, substance misuse or alcohol abuse or dependence—do not apply to him. Appeal Brief at 1, apparently referencing Directive, Encl. 2, App. A ¶ 18. To the extent that he is arguing his financial problems do not raise security concerns, we do not find that argument persuasive. It is well established that a history of financial problems, an inability to satisfy debts, and a failure to file income tax returns as required may raise security concerns under Guideline F. *Id.* at ¶¶ 19(a), 19(c), and 19(f). The Guideline F security concerns are broader than the possibility that an applicant might knowingly compromise classified information in order to raise money to satisfy his or her debts. Those concerns also encompass the risk that applicants who are financially irresponsible might also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See, e.g.*, ISCR Case No. 16-04112 at 3-4 (App. Bd. May 28, 2019).

In his appeal brief, Applicant states he submitted three character-reference letters, and the Judge referenced only two of them in his decision. In a post-hearing submission, Applicant sent an email to the Judge and Department Counsel that contained eight attachments. Three of those attachments were identified as being possible letters of reference. In the decision, the Judge noted Applicant submitted nine post-hearing documents. The Judge apparently broke those documents down and marked them as ten exhibits (Applicant's Exhibits (AE) C-L). Decision at 2. Only two of those exhibits are letters of reference (AE F and G). These are letters from Applicant's current manager and a coworker. In his brief, Applicant does not identify the author of the apparent missing letter, describe its contents, or otherwise explain its significance. More specifically, he has not shown the purported missing letter reflects something different from the two letters in the record and is, therefore, something other than cumulative evidence. While a document may be missing or may have been misidentified in the forwarding email, Applicant has failed to establish that any error that may have occurred was harmful, *i.e.*, an error that, had it not occurred, the case might have been decided differently. Applicant also notes that the Judge erred in some findings regarding his children, but those errors were also harmless.

In his decision, the Judge noted that Applicant testified all of his tax returns had been filed, but also indicated that Applicant did not provide documentation to corroborate that his missing tax returns were filed. In his appeal brief, Applicant argues proof was provided that his tax returns were filed, but he does not cite to any specific record evidence supporting that claim. Based on our review of the record, we find no error in the Judge's finding that Applicant did not provide documentary evidence to corroborate his claim that the delinquent tax returns were filed.

Applicant’s remaining arguments amount to a disagreement with the Judge’s weighing of the evidence. He argues, for example, that he is trustworthy and nothing in his lifestyle or activities would indicate he is a security risk. He further indicates that he has never deliberately or inadvertently failed to safeguard classified information. Although an absence of prior security violations is a matter that a Judge should consider, along with all the other evidence in the record, it does not preclude a Judge from concluding that an applicant’s circumstances present security concerns that remain unmitigated. The Government does not have to wait until an applicant has compromised or mishandled classified information before it can deny the applicant a clearance. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 16-01131 at 2-3 (App. Bd. Apr. 19, 2018). In short, none of his arguments establish that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *Id.* at 3. *See also* Directive ¶ E3.1.32.3.

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