

Date: September 8, 2022

In the matter of:)	
)	
)	
-----)	ISCR Case No. 21-00721
)	
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, 2021, 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, during which the SOR was amended upon Government motion. On May 10, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

As amended, the SOR alleged that Applicant failed to timely file State X income tax returns for Tax Years (TYs) 2015 through 2019, Federal income tax returns for TYs 2015 through 2020, and State Y income tax returns for TYs 2019 and 2020. The Judge found against Applicant on all three allegations. Applicant raises the following issues on appeal: whether the Judge erred or misstated the evidence in her findings of fact and whether she failed to apply the mitigating conditions properly. Consistent with the following, we affirm.

Judge's Finding of Fact: The Judge's findings, in pertinent part, are summarized below.

Applicant is in his early seventies. After earning a doctorate in the late 1970s, he has spent his career in the defense industry. Married since the mid-1980s, he has three adult children. In 2012, Applicant and his spouse began caring for his elderly aunt. Although she resided in another state, he was responsible for finding caregivers, managing her finances, and acting as healthcare proxy.

In 2014, Applicant resigned from long-term employment with a defense contractor in State Y. In 2015, he secured employment in State X and relocated across the country. His spouse remained behind, in part to care for his elderly relative. Between 2016 and 2019, the aunt's medical and healthcare situation grew more complex and demanded more of their time and attention, as they moved her first to an assisted living facility closer to his spouse and then to a second facility, while also taking responsibility for clearing out and selling her home. Applicant's aunt died in July 2019.

Since about 2012, Applicant and his spouse relied upon a certified public accountant (CPA) to file their tax returns. It was Applicant's responsibility to forward the necessary documents to the CPA. After Applicant moved to State X in 2015, some of the documents necessary to file the returns were sent to him in State X and some were sent to the family home in State Y. Applicant attempted to sort through the documents on his monthly trips home. He filed their tax returns for TYs 2015 and 2016 late, either in 2018 or 2019.

Applicant did not file the couple's joint federal or State X tax returns on time for TYs 2017 or 2018. In Spring 2019, Applicant was laid off and moved back home. In July 2019, he started work for his current employer in State Y. He did not file a tax return with the IRS or with States X and Y for TY 2019 when they were due.

On his June 2020 security clearance application (SCA), Applicant reported that he and his spouse had filed late for TYs 2015 and 2016 and had not yet filed for 2017 and 2018. He reported that he did not know what, if anything, he owed to the IRS or State X for TYs 2017 and 2018. In August 2020, Applicant was interviewed by a security clearance background investigator. He confirmed his failure to file for TYs 2017 and 2018 and stated his intent to contact the IRS to resolve the issue and pay any taxes owed. Both in his SCA and his interview, Applicant attributed his failure to file to the difficulties of caring for his elderly relative and the challenges of living in State X, away from his spouse, from 2015 through 2019.

In February 2021, Applicant responded to interrogatories sent to him by the Defense Counterintelligence and Security Agency's Consolidated Adjudication Facility (DCSA CAF) and provided the tax account transcripts requested. The IRS transcripts revealed that, as of January 2021, his federal returns were still not filed for TYs 2017 and 2018. In a detailed statement submitted with the transcripts, Applicant again attributed his failure to file to the long-term demands of caring for his aunt, the challenges of living and working remotely, and the logistical hurdles of cross-country moves and securing housing and employment.

In August 2021, Applicant and his spouse made a COVID-delayed trip to State X to clean out his condominium, put it on the market, and retrieve documents that he had left there. In March 2022, he filed the delinquent state and Federal returns for tax years 2017 through 2020. Upon filing, Applicant owed no additional taxes to either State X or State Y and instead received refunds for each year. Upon filing his Federal returns for TYs 2017 through 2020, Applicant owed additional sums for each year in taxes, interest, and penalties, in amounts ranging from \$829 for TY 2017 to \$16,000 for TY 2020. Applicant paid all sums due at the time of filing.

Judge's Analysis

Applicant admitted that he and his spouse did not file their Federal and state income tax returns when due for TYs 2015 through 2020. "There was no intent to evade paying taxes, although the recently filed tax returns show that they underpaid their federal income taxes for tax years 2017 through 2020." Decision at 9.

Guideline F security concerns are established when an individual does not comply with his tax-filing obligations. While Applicant rectified his TY 2015 and 2016 issues by November 2019, well before the SOR was issued, his failure to file on time for TYs 2017 through 2020 undermines his case in reform.

Applicant's delay in filing was due, in part, to circumstances beyond his control, particularly the challenges of overseeing his aunt's medical care, making arrangements for her living situation, and ultimately serving as executor of her estate. However, the delay was not entirely due to circumstances outside of his control. During his August 2020 interview with a background investigator, he stated he would contact the IRS within the following few days to resolve his tax issues. Despite receiving inquiries from the IRS in December 2018 and March 2020, interrogatories from the DCSA CAF in early 2021, and his SOR in June 2021, Applicant had not filed his delinquent returns for tax years 2017 through 2020 by the end of 2021.

Applicant belatedly filed his state and Federal returns and paid the federal taxes owed. However, under Appeal Board precedent, the timing of corrective action is a factor to consider, as applicants who only begin to address their delinquent tax returns after having been placed on notice that their clearance may be in jeopardy may not comply with laws, rules, and regulations when their immediate interests are not imperiled.

[Applicant's] lack of urgency in addressing his tax issues is incompatible with the judgment, reliability, and trustworthiness expected of him, based on his education and experience with the clearance process. The financial considerations security concerns raised by Applicant's repeated and recent failure to comply with his tax-filing obligations are not fully mitigated at this time. [Decision at 11.]

Discussion

Applicant challenges several aspects of the Judge's findings of fact. First, he takes issue with her use of the terms "State X" and "State Y." Applicant notes that these terms fail to convey the logistical difficulties of traveling to help his wife and aunt on the East Coast while working

remotely on the West Coast. The Judge’s use of generic terms, however, simply complies with DOHA protocols in place to protect the privacy of applicants. She clearly considered that this was a cross-country effort, as she refers explicitly to Applicant’s “relocat[ing] across the country.” Decision at 3. Moreover, the Judge thoroughly recites the multifaceted logistical challenges of arranging for the relative’s care, his wife’s dedicated efforts, and his assistance from across the country. *See* Decision at 3, 5.

In another example, Applicant challenges the Judge’s finding that “the recently filed tax returns show that they underpaid their federal income taxes for tax years 2017 through 2020.” Appeal Brief at 4, quoting Decision at 9. Applicant asserts that “[i]t should be noted and corrected in the Decision that not only have I paid overdue federal taxes, but I have also paid all penalty fees as well as interest on the overdue taxes,” and that the Judge should “provide the detailed numbers and their source to illuminate this alleged underpayment.” Appeal Brief at 4. Applicant misreads the Judge’s decision, which clearly states that the couple “paid the taxes owed when they submitted their tax returns.” Decision at 6. In the statement at issue, the Judge was commenting—accurately—that Applicant owed taxes upon filing late. In summary, we find no merit in Applicant’s various assertions of error in the Judge’s findings of fact.

Additionally, Applicant contends that the Judge failed to apply the mitigating conditions properly. For example, Applicant argues that the Judge failed to properly weigh the challenges of caring for his elderly relative, the difficulties of working far from his family, and the logistics of two cross-country moves. 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 none of the mitigating conditions fully apply.

As the Judge noted, the timing of Applicant’s efforts to resolve his delinquent tax filings 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. That assertion is well grounded in the Appeal Board precedent to which the Judge cites. The fact that Applicant has recently corrected his Federal and state tax problems does not preclude careful consideration of Applicant’s prior behavior and how it reflects on his security worthiness. *See, e.g.*, ISCR Case No. 12-05053 at 5 (App. Bd. Oct. 30, 2014).

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