



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 APPEAL BOARD  
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Date: October 31, 2022

|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 20-00017 |
|                                  | ) |                        |
| 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 April 10, 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 August 17, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Tuider denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged six financial concerns—a failure to file Federal income tax returns for tax years 2012 through 2018, a failure to file state income tax returns for the same period, and four delinquent consumer debts. The Judge found for Applicant on the four consumer debts and against Applicant on the Federal and state tax allegations. The favorable findings are not in issue. Applicant raises the following issue on appeal—whether the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

## **The Judge’s Findings of Fact and Analysis**

Applicant is in his forties and married with two children. After serving on active duty in the U.S. military, he has worked as a defense contractor for the past 16 years. He has held a security clearance since the late 1990s.

With his Answer to the SOR, Applicant attached his Federal and state tax returns for tax year (TY) 2018. At hearing, Applicant submitted his Federal and state returns for TY 2017. As of his hearing in June 2021, Applicant had not filed his Federal or state income tax returns for TYs 2012–2016.

Post-hearing, Applicant submitted an agreement with a professional tax service, which he entered into after his hearing, and his recently completed state and Federal returns for TYs 2012–2016. Additionally, Applicant documented two payments to the IRS in May 2021 that totaled about \$10,000.

During his October 2019 security clearance interview, Applicant stated that he was unsure of the amount owed for his Federal and state taxes, that the state had garnished his wages for delinquent taxes, and that he was in the process of contacting someone to assist him with his tax issues.

Applicant was alerted to the fact that his failure to file these returns was a concern to the Government during his October 2019 [security clearance interview] and later when he received his April 2020 SOR. These events apparently did not prompt Applicant to recognize the seriousness of his situation and take immediate corrective action. He ultimately filed his Federal and state income tax returns; however, he did not begin to do so until the eve of his hearing and five of his returns were not filed until after his hearing. His explanation of being scared to file his returns and concerned about the amount he would owe is not a convincing explanation for an individual of his age and experience. . . . The evidence demonstrates that Applicant did not act responsibly with regard to timely filing his Federal income tax returns and paying or making payment arrangements for taxes owed. [Decision at 9.]

## **Discussion**

Applicant has not challenged any of the Judge’s specific findings of fact. Rather, he contends the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all of the evidence, by mis-weighting the evidence, and by not properly applying the mitigating conditions and whole-person concept.

First, Applicant argues that the Judge “failed to adhere to the procedures required . . . when he failed to consider all relevant evidence submitted by Appellant[.]” Appeal Brief at 4. However, counsel cites to no evidence that the Judge failed to consider. “The appeal brief must state the specific issue or issues being raised, and cite specific portions of the case record supporting any

alleged error.” Directive ¶ E3.1.30. Applicant’s counsel failed to comply with this fundamental requirement and failed to carry his burden on this issue.

Second, Applicant argues that the Judge misweighed the evidence and misapplied the mitigating conditions. For example, Applicant asserts that the Judge failed to give appropriate weight to his military service and to the fact that his wife does not work outside the home. Our review of the record confirms that the Judge considered and discussed those matters, as well as the other matters raised by Applicant. None of Applicant’s arguments 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. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Although we give due consideration to the Hearing Office cases that Applicant’s counsel has cited, they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018).

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