



**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: November 2, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 21-00197
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 21, 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. A copy of the file of relevant material (FORM) was provided to Applicant by letter of January 31, 2022. Applicant was provided a period of 30 days to file objections and submit material for the Judge’s consideration, but he did not respond to the FORM. On September 8, 2022, after consideration of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Pamela C. Benson 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 Judge's Findings of Fact and Analysis

Applicant is in his mid-forties, married, with no children. He served on active duty from 1994 through 2000, has held a security clearance since approximately 2000, and has worked for defense contractors since at least 2010. The SOR alleged that Applicant owes delinquent Federal income taxes for tax year (TY) 2014 in the approximate amount of \$11,400 and that he failed to file Federal and state income tax returns for TYs 2016, 2017, 2018, and 2019.

In April 2021, Applicant responded to government interrogatories, adopted the summary of his clearance interview, and provided requested tax transcripts. In responding to interrogatories, Applicant provided no proof that he had filed any of the Federal or state income tax returns alleged in the SOR, no proof of an established payment plan with any tax authority, and no proof of payments.

In responding to the SOR, Applicant admitted all SOR allegations and attributed the issue to procrastination and a failure to consider the matter a priority. Additionally, he stated that he was in the process of remedying the tax issues.

[Applicant] has failed to provide supporting documentation to demonstrate his good-faith efforts to remedy this matter. There is insufficient information to determine the amount of additional Federal or state tax debt he may owe, if any. He failed to take responsible action to resolve his unfiled Federal and State A income tax returns for multiple years and pay his tax delinquency. . . . A person who fails to address concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake. Financial considerations security concerns are not mitigated. [Decision at 4–5.]

Discussion

In his appeal brief, Counsel for Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept.

Counsel argues repeatedly that the Judge did not give appropriate weight to "evidence that the Appellant had/has a plan in place to resolve his outstanding tax obligation." Appeal Brief at 8, citing to Applicant's response to SOR and Interrogatories. Of note, the only plan that Applicant articulated in his answer to the SOR was the phrase "In Process to Remedy." SOR Answer at 2–3. To the extent that Applicant stated a plan in his response to interrogatories, it was "locating paperwork to file." Item 4 at 5 and 7. This argument by Counsel is frivolous.

Moreover, Counsel argues that Applicant's outstanding tax debt "has been reduced to approximately \$2,000, which is significant and something that was overlooked by the Administrative Judge in her decision." Appeal Brief at 4. This assertion is baseless and unsupported by the record evidence. Applicant disclosed a Federal tax debt of approximately \$11,400 in his response to interrogatories and admitted to the same in his answer to the SOR. Item 4 at 6; SOR Answer at 2. He submitted no evidence that the Federal tax debt was reduced.

If Counsel seeks to introduce it now, cloaked in argument, the Appeal Board reminds Counsel that the Appeal Board is prohibited from considering new evidence on appeal. Directive E3.1.29.

None of Counsel's arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). We give due consideration to the Hearing Office cases that Applicant's Counsel has cited, but they are neither binding precedent on the Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018). Moreover, the cited cases are easily distinguishable on their face.

Applicant has failed to establish any error below. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable.

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

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