

DATE: December 14, 2022

In Re:)
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 -----) ISCR Case No. 20-03027
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)
 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 February 5, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—a security concern raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 29, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 based on incorrect information. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is in her late forties and married, with no children. She was medically retired from the U.S. military in 2016 and is a prospective employee of a defense contractor. The SOR alleged that Applicant failed to timely file her 2013–2017 federal income tax returns, and Applicant admitted the sole allegation.

In 2016 or 2017, Applicant received a lump-sum inheritance of approximately \$197,000, but she did not use the funds to hire a tax professional to prepare her unfiled federal returns. She claimed to interview several accountants but asserted that she could not afford their fees. Applicant used the inherited funds instead to cover bills that were in arrears, medical costs, and living expenses. The inheritance is now depleted.

After the SOR was issued in February 2021, Applicant hired a tax attorney to file all of her federal returns from 2013–2020. In November 2021, she filed her 2014–2016 tax returns. In August 2022, Applicant filed her 2013 and 2017 tax returns.

Applicant testified that her medical issues impacted her ability to complete her taxes. She needed help to file her federal tax returns and did not receive it. Applicant provided character letters from colleagues and former supervisors, including retired general officers. They attest to her trustworthiness and reliability and recommend that her clearance be continued.

Applicant provided numerous reasons why she was unable to file for tax years 2013 through 2017 in a timely manner, to include: reserve duties, mobilization orders, long working hours, lack of access to her financial documents, medical issues leading to her medical retirement, and a period of homelessness. While several circumstances were beyond Applicant's control, some of them were not. She chose not to hire a professional to assist her when she received her inheritance of almost \$200,000 in 2016 or 2017.

She finally acted to hire a tax professional in 2021 who filed her missing returns . . . after the SOR had issued. Applicant's actions do not amount to responsible actions under the circumstances. While it appears Applicant's missing 2013–2017 tax returns are all filed, they are all at least four years late and as much as eight years late. [Decision at 6.]

Discussion

In her appeal brief, Applicant asserts that the Judge made his determination “without actually having all the facts at his fingertips” and provides additional information about the circumstances that led to her financial issues. Appeal Brief at 1–2. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive E3.1.29.

Applicant also argues that the Judge did not give appropriate weight to her medical issues and her earlier efforts to resolve the tax situation. The Judge, however, discussed the matters that Applicant is raising on appeal. Her arguments are neither sufficient to rebut the presumption that the Judge

considered all of the evidence in the record nor 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). In his whole-person analysis, the Judge complied with the requirements of the Directive by considering the totality of the evidence in reaching his decision. An ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 10-07127 at 3 (App. Bd. Dec. 19, 2012).

Applicant has failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the 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 the national security.”

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