



**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: January 30, 2023

In the matter of:)	
)	
-----)	ISCR Case No. 21-02286
)	
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 December 29, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On December 16, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Benjamin R. Dorsey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found in favor of Applicant on the sole Guideline J allegation, one of two Guideline F allegations, and three of six Guideline E allegations. The unfavorable findings involved a state tax lien for about \$900 entered against Applicant in 2011, and three falsifications—deliberately providing false information on a security clearance application (SCA) in 2020, during a background interview in 2020, and on a SCA in 2017. Regarding the state tax lien, the Judge noted that Applicant failed to provide documentary evidence corroborating his claim that it was paid.

On appeal, Applicant contends that he had a Secret clearance, and the current adjudication was to determine whether he was eligible for a Top Secret clearance. He is apparently arguing that his Secret clearance, having previously been adjudicated, should not have been revoked in this proceeding. To the extent that he is arguing the Government is equitably estopped from revoking his Secret clearance eligibility, we find no merit in that argument. The Board has previously held that there is no right to a security clearance, nor is there a presumption in favor of continuing or granting a security clearance. *See, e.g.*, ISCR Case No. 03-08073 at 3-4 (App. Bd. Oct. 25, 2005). The Government cannot be precluded from protecting classified information under the doctrine of equitable estoppel. *Id.* Moreover, the Government has the right to reconsider the security significance of past conduct in light of more recent conduct having negative security significance. *Id.* Applicant's 2020 security clearance application (SCA) reflects that he was granted a security clearance in 1981 that was renewed in 2018. Government Exhibit (GE) 1 at 36-37. The Government was not precluded from reevaluating Applicant's past conduct in light of his ongoing financial delinquencies and new falsifications.

Applicant contends that he fully disclosed his criminal conduct when his security clearance eligibility was continued in 2018. In his 2017 SCA, however, Applicant failed to disclose the criminal charge against him for operating a vehicle while intoxicated in 2014. GE 2 at 29-30. Based on our review of the record, the Judge's material findings and conclusions regarding Applicant's alleged falsification of his 2017 SCA for failing to disclose that charge are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019).

Applicant further argues he has presented evidence to mitigate the Government's security concerns. Some of his arguments extend to non-alleged conduct or to alleged conduct that the Judge found in his favor. None of his 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. *See, e.g.*, ISCR Case No. 21-01169 at 5 (App. Bd. May 13, 2022). Applicant also notes that he has lost his job due to the loss of his security clearance. On this last point, the Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 19-01206 at 2 (App. Bd. May 13, 2020).

Applicant 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 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 the national security."

Order

The decision is **AFFIRMED**.

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

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board