



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: January 26, 2023

In the matter of:)	
)	
-----)	ISCR Case No. 21-02451
)	
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 December 13, 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. On December 1, 2022, after the record closed, 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.

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 her late thirties and divorced with no children. A military veteran, she has an undergraduate degree and has worked for her current employer since 2019.

The SOR alleged five delinquent debts totaling approximately \$31,000. They include credit card accounts, a car loan, and a business loan for which Applicant was personally responsible. Additionally, the Government alleged that Applicant failed to file her federal income tax returns for Tax Years (TYs) 2016 and 2017 and her state returns for TYs 2010 – 2012 and 2016 – 2018. In her Answer, Applicant partially denied the allegation concerning her state tax filings, asserting that she was not required to file for 2010 – 2012. She admitted all other allegations.

Applicant attributed her financial problems to a failed business venture and a subsequent period of unemployment. In about 2014, Applicant started a small business that was initially profitable, but became unprofitable by 2017. Applicant sold the business in 2018 and was then underemployed for a few months, and unemployed for about five months.

Of the five delinquent debts alleged, Applicant entered into payment agreements with two creditors (SOR ¶¶ 1.c and 1.d) and started making monthly payments in March 2022. On two delinquent credit card accounts (SOR ¶¶ 1.a and 1.b), Applicant has not yet contacted the creditors. On the fifth delinquent loan (SOR ¶ 1.e), Applicant asserts that she has been unable to make a payment plan arrangement, despite her efforts.

Regarding her failure to file federal tax returns, Applicant stated that she forgot about her 2016 return when it was due and that she has not yet filed. She plans to save money to pay the taxes due, which she estimates at about \$5,000, at the time she files. She filed her 2017 federal return in 2022 and paid \$2,933.

Regarding her failure to file state tax returns, Applicant was not required to file for TYs 2010 – 2012. For TYs 2016 – 2018, she failed to timely file. She stated that she did not file her 2016 return because she forgot and did not file her 2017 and 2018 returns because she did not have the funds to pay any taxes due. She has now filed her state tax returns for 2017 – 2019, although late, and timely filed her 2020 and 2021 returns. She made payments in March 2022 and October 2022 totaling about \$1,300 for unspecified tax years. She plans to save money prior to filing her 2016 state tax return so that she can pay taxes due at the time of filing.

In 2007, Applicant was granted a security clearance while on active duty with a warning that her clearance would be suspended if she did not resolve her delinquent debts, which were caused by her unemployment prior to military service.

None of the mitigating conditions is fully applicable. While Applicant has provided evidence that she is resolving two of the SOR debts, she has not made sufficient headway on resolving the majority of those debts. She has not filed her 2016 federal or state income tax return and believes that she will have indebtedness when she does. Her financial issues are ongoing. Although some conditions were beyond her control, Applicant has not established that she acted

responsibly under the circumstances. Moreover, her failure to file her federal and state returns was not due to circumstances beyond her control.

Discussion

Applicant has not challenged any of the Judge's specific findings of fact. Rather, she 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. For example, Applicant argues that the Judge "did not place appropriate weight on the recency of [Applicant's] conduct[.]" noting that it has been five years since she last incurred any delinquent tax or consumer debt. Appeal Brief at 6. However, the Judge's determination that Applicant still has significant unaddressed delinquent debt and that she has not filed all her state and federal returns is supported by the record, as is his conclusion that "[h]er financial issues are ongoing." Decision at 6.

Our review of the record and decision confirms that the Judge considered and discussed those issues highlighted by Applicant on appeal. 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. *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 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