



**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: April 19, 2023

In the matter of:)
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)
Applicant for Security Clearance)
_____)

ISCR Case No. 20-02406

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 23, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 27, 2023, after considering 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.

Under Guideline F, the SOR alleged that Applicant had 10 delinquent debts totaling about \$53,200, including a check drawn on insufficient funds for about \$200; that he failed to file, as required, his Federal and state income tax returns for 2018; that he was indebted to the Federal Government for 2019 delinquent taxes in an unspecified amount; and that he “repeatedly engaged in kiting by transferring over \$100,000 between checking accounts held at different banks using checks, ATM withdrawals, and cash deposits” between 2016 and 2018. The SOR also cross-alleged the insufficient-fund check allegation and the kiting allegation in a single Guideline E

allegation. In responding to the SOR, Applicant admitted the Guideline F allegations with explanations and denied the Guideline E allegation. The Judge found against Applicant on the Guideline F allegations and in favor of him on the Guideline E allegation.

The Judge summarized the case as follows:

Some of Applicant's financial problems were triggered by circumstances beyond his control, and some of his financial indebtedness can be attributed to poor decisions. He was involved in fraudulent financial practices, and he has not filed his 2018 state and federal income tax returns. He filed for bankruptcy protection shortly after his receipt of the SOR, and it remains pending as of the close of the record. He did not sufficiently mitigate the financial consideration . . . security concerns. Eligibility for access to classified information is denied. [Decision at 1]

The Judge also found that bankruptcy records reflect that Applicant's "gambling losses totaled \$23,056 in 2021." Decision at 3, supported by File of Relevant Material Item 6 (Chapter 13 bankruptcy record) at 40.

On appeal, Applicant argues that the Judge failed to weigh the evidence properly, including the circumstances beyond his control, his ongoing Chapter 13 bankruptcy proceeding, and his favorable character evidence and security record. However, 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 requests that he be able to retain his Secret level clearance at a minimum. The Board has no authority to deny Applicant a higher-level clearance while permitting him to retain a lower-level clearance. *See, e.g.*, ISCR Case No. 03-11627 at 4 (App. Bd. Mar. 18, 2005)

Applicant failed to establish that the Judge committed any harmful error or that he warrants any remedial action. 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: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board