



**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: June 22, 2023

In the matter of:	)	
	)	
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	)	
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 September 21, 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 the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 9, 2023, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30, essentially challenging the Judge’s weighing of the evidence.

The SOR alleged that Applicant owed the Federal Government approximately \$159,000 in delinquent taxes for 2009, 2010, and 2013. The Judge found against Applicant on this sole allegation. Consistent with the following, we affirm the Judge’s decision.

The alleged tax debt arose from two businesses that Applicant owned. One business failed in 2010 and the other was sold before he filed Chapter 7 bankruptcy in 2014. As his businesses declined during an economic recession, Applicant tried to keep his employees on the payroll instead of laying them off. His office secretary informed him that she was paying the taxes, but he was also aware of the IRS auctioning off his business equipment. His financial problems were also exacerbated by clients failing to pay their bills and by his divorce in 2013. Although he received a bankruptcy discharge in 2014, the IRS had filed a secured claim for over \$150,000 in that proceeding. He has not made any voluntary payments towards that debt, but the IRS withheld about \$47,000 of his tax refunds between 2010 and 2020. He did not explain why the tax refund withholdings stopped in 2020, and he did not know the current balance of this debt. He failed to establish a good-faith effort to pay the delinquent taxes or to show this debt is being resolved. The Judge concluded the alleged security concerns were not mitigated.

On appeal, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to comply with the provisions of Executive Order 10865 and the Directive by not considering all the evidence and by not properly applying the mitigating conditions and whole-person concept. His arguments, for example, highlight the circumstances that led to his tax delinquency, the poor tax advice he received from trusted individuals, the IRS's collection actions, and the lack of any new financial problems since his bankruptcy discharge. However, these were matters that the Judge addressed. 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).*

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* AG ¶ 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