

Date: July 26, 2023

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In the matter of:))
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Applicant for Public Trust Position))
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ADP Case No. 20-02969

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 eligibility for access to sensitive information. On January 12, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for 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 30, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Ross D. Hyams denied Applicant’s request for public trust eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleges that Applicant has 14 delinquent debts totaling about \$85,000, including child support arrearages of about \$58,000. During the hearing, the SOR was amended to add an allegation in conformance with the record, alleging that Applicant failed to timely file his Federal and state income tax returns for tax year 2021. In responding to the SOR, Applicant admitted each of the allegations with explanations. The Judge found against Applicant on all but two student loan debts. In general, the Judge concluded that Applicant failed to present sufficient evidence to mitigate the trustworthiness concerns arising from his delinquent debts and failure to file his 2021 Federal and state income tax returns.

On appeal, Applicant contends the Judge: (1) erred by considering the “late” filing of his 2021 tax returns because he believes they could have been filed anytime; (2) did not consider his prior security eligibility; (3) unfairly weighed his child support arrearage against his payment record; and (4) did not consider his record of appropriately handling sensitive information. Consistent with the following, we affirm.

Judge’s Findings of Fact and Analysis

Applicant, in his late-30s, has been married three times, and has three minor children who live with his first spouse. He served on active duty in the United States military from 2002 to 2012, and in the Reserve force from 2012 to 2016. He was honorably discharged from both periods of service. He has worked in information technology for a government contractor since 2017. When Applicant first separated from his spouse in 2011, he signed an agreement against legal advice, where he agreed to pay \$3,000 per month in child support and alimony. The support agreement was incorporated into his final divorce decree, despite his concerns that he was financially overextended. Applicant paid his ex-spouse partial payments in cash when he was financially able. He rarely made full payments on his support obligations. In 2017, his ex-spouse sought to enforce his child support in another state. As a result, his monthly support obligations were reduced to \$1,200 per month, but he was assessed an arrearage amount owed of about \$122,000. The current child-support arrearage balance is about \$135,000. Although Applicant’s paycheck had been garnished since March 2020, his child-support arrearage has increased about \$10,000 over three years, and he did not document a track record of payments for earlier dates.

The Judge found that the remaining debts alleged in the SOR were unresolved except for two student loans. Additionally, the Judge found that Applicant failed to timely file his 2021 Federal and state income tax returns. Applicant stated that his spouse, who is a bookkeeper, told him he could file his tax returns at any time. He submitted unsigned 2021 tax returns but did not document that the returns were filed. Finally, the Judge noted that Applicant has a history of financial problems that were not alleged in the SOR. Applicant filed Chapter 7 bankruptcy in 2004, had a home foreclosed in 2014, and a state tax lien for \$1,800 filed against him in 2018. The Judge noted that Applicant did not provide a current financial statement or evidence of credit counseling, but Applicant did submit documentation of his work history and character letters.

Discussion

Applicant contends the Judge erred by considering the “late” filing of his 2021 tax returns. He contends that he could have filed them anytime, and that the emails between “the prosecution and defense” resulted in the Judge stating that “the late filing would hold no bearing on the outcome of the case.” Appeal Brief at 1. In evaluating a case under Guideline F, a Judge should consider the extent to which an applicant’s circumstances cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. This obligation is rooted in the language of the Directive, which states that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant’s ability to protect classified information. AG ¶ 18. *See, e.g.*, ISCR Case No. 17-01382 at 3 (App. Bd. May 16, 2018).

During the hearing, Applicant stated that he had not yet filed his 2021 income tax returns. Tr. 70. When asked if he obtained an extension to file his 2021 tax returns late, he said,

I did not. But my ex-wife who is basically an accountant said you could file taxes anytime. So I don't know if that's -- I mean I'm guessing that's kind of true. You can file taxes anytime. [Tr. 70.]

When asked by the Judge if his ex-wife is an accountant, he said, "she's the payroll manager for a construction company." *Id.* Applicant noted in his appeal that he has never filed fraudulent income tax returns and, "though [he] has filed taxes late," he always followed guidelines when filed.

AG ¶ 19(f) lists conditions that could raise a security concern and may be disqualifying, including, "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record shows that Applicant had not filed his 2021 income tax returns as of the hearing, and his post-hearing submission consisted of an unsigned and undated return for that tax year. Applicant's focus on the "fraudulently filed" language of AG ¶ 19(f) on appeal is misplaced, as the disqualifying condition is also invoked by an individual's failure to file tax returns as required. Based on the record, the Judge appropriately held that the 2021 income tax returns were not timely filed.

Applicant next claims that he was unable to argue that he has held security eligibility in the past, namely during his military service, and emphasizes his unblemished record of safeguarding sensitive information. The record does not support Applicant's contentions. Government Exhibit 1 is Applicant's security clearance application where he noted his prior secret security clearances granted in 2002 and 2012, and that he has never had security clearance eligibility denied, suspended, or revoked. GE 1 at 41-43. The hearing transcript does not support Applicant's claim that he was prevented from arguing his past security clearance record. None of his arguments are enough to rebut the presumption that the Judge considered all of the record evidence, including that he has held a security clearance in the past. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 21-01365 at 4 (App. Bd. Feb. 17, 2023).

Finally, Applicant misstates that he was found untrustworthy based on a misapplication of his history of child-support payments via garnishment or otherwise. Rather, the Judge found that Applicant has not sufficiently addressed his child-support arrearage and carries a growing delinquency totaling about \$135,000. The matters discussed above, along with the Judge's findings of unresolved debts not mentioned in Applicant's appeal, sufficiently support the Judge's overall finding against his eligibility for a public trust position. To the extent that Applicant is contending the Judge mis-weighed the evidence, we find no merit in those assertions. None of his arguments are enough to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* The remainder of Applicant's appeal brief consists of an explanation of his efforts to resolve his debts.

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. A trustworthiness determination will be granted only when “clearly consistent with the national security interests of the United States.” AG ¶ 1(d). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013) (citing *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)); ADP Case No. 17-03252 at 3 (App. Bd. Aug. 13, 2018). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

Order

The decision is **AFFIRMED**.

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

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

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board