

Date: July 27, 2023

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In the matter of:)	
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-----)	ISCR Case No. 22-02021
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 12, 2022, 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 June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On June 9, 2023, Defense Office of Hearings and Appeals Administrative Judge Darlene Lokey Anderson denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant, in his early 40s, is employed as a defense contractor and has held a security clearance since 2007. In his July 2021 security clearance application, Applicant disclosed that he had failed to file his Federal income tax returns since 2014, citing a lack of knowledge on how to file the returns properly and asserting that he had contacted a tax attorney to help him address the outstanding returns. See File of Relevant Material (FORM) Item 3 at 34-36. One year later, in July 2022, Applicant responded to Government interrogatories and disclosed that he had still not filed his delinquent returns, now including those for tax years 2012 and 2013, and again represented

that he was “contacting multiple tax agencies who may be able to help” him file correctly. FORM Item 4 at 3-20. Based on the foregoing, the SOR alleged that Applicant failed to timely file his Federal income tax returns for tax years 2012 through 2020. As of his December 2022 answer to the SOR, Applicant asserted, without elaborating, that returns for all of the years alleged were in the process of being filed.

The Judge found that Applicant was aware of the requirement to timely file his tax returns and there was no documentation corroborating that he had taken any steps to ensure the alleged returns are being filed or that Applicant’s returns will be timely filed going forward. Decision at 5. The Judge ruled adversely on the SOR allegation and concluded that Applicant’s “inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment,” and he therefore “does not meet the requirements to access classified information.” *Id.*

On appeal, Counsel for Applicant contends that the Judge failed to properly consider all available evidence and failed to properly apply the mitigating conditions and whole-person analysis. As discussed more fully below, Counsel’s arguments are frivolous.

For example, Counsel argues that the Judge placed too much weight on the fact that Applicant’s returns were unfiled and “chose to disregard that [Applicant’s] taxes would not lead to a debt” and that his Transcripts show that he does “not have a current outstanding debt.” Appeal Brief at 9. This argument fails for multiple reasons. First, it is well-settled that an individual who is unwilling to fulfill his legal obligations to the Federal Government – such as timely filing income tax returns – does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. *See, e.g.*, ISCR Case No. 98-0810, 2000 WL 1247732 at *4 (App. Bd. Jun. 8, 2000) (“It is untenable for an applicant to refuse to accept his or her legal obligation to comply with the federal tax laws and then insist that the federal government must grant him or her the privilege of handling classified information.”). The Directive cites failure to file tax returns as a disqualifying condition in and of itself, irrespective of whether the underlying taxes have actually been paid, such as through withholding. Indeed, an applicant’s legal obligation to timely file income tax returns is independent from whether or not he owes additional taxes. *See, e.g.*, ISCR Case No. 94-0964, 1996 WL 648762 at *5 (App. Bd. Jul. 3, 1996). Even if the record in this case supported that Applicant owed no debt for the deficient tax years alleged in the SOR (it does not), the lack of any tax balance does not nullify the concern raised by his knowing and repeated failure to abide by his tax filing obligation for almost a decade.

Second and to that end, Counsel’s argument that Applicant has no outstanding tax debt and that filing his delinquent returns will not result in any balance being assessed is not persuasive. While Applicant’s Transcripts do reflect that no balances are owed for the years in question, they also reflect that no returns, including IRS substitute tax returns, have been filed for those years. *See* FORM Item 4 at 4-20. Without the returns being filed, thereby providing the underlying data with which to calculate Applicant’s tax obligations, the \$0 account balance reported in each transcript is not sufficient to establish that Applicant owes no Federal tax debt for those years.

Finally, Counsel argues that the Judge “failed to make a rational finding” regarding AG ¶ 20(d), which permits mitigation if “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Appeal Brief at 8. In support of this argument,

Counsel asserts that Applicant has “successfully completed a good-faith arrangement to pay back prior and future debts through proper withholding.” Appeal Brief at 8. Counsel cites to a line entry in Applicant’s 2015 transcript that reflects, “Withholding allowances limited – letter sent to employer” on August 12, 2015. *See* FORM Item 4 at 14. Because there are no delinquent debts alleged in the SOR, it is unclear why Counsel elected to focus his challenge on AG ¶ 20(d) instead of AG ¶ 20(g), which specifically applies to tax filing concerns and allows similarly for mitigation when “the individual has made arrangements with the appropriate tax authority to file . . . and is in compliance with those arrangements.” Regardless, Counsel’s challenge under either mitigating condition fails because there is no evidence that Applicant has made *any* arrangement to address *any* of his tax deficiencies.

Despite Counsel’s undue reliance on this line item and blanket statement that “Applicant has no outstanding debt due because [he] has already completed a good-faith arrangement to prevent future tax debts via proper tax withholding” (Appeal Brief at 8), the record is devoid of information regarding the impact of this notice on any tax assessment resulting from Applicant’s tax filing deficiency for that tax year or any of the other years alleged in the SOR.

Applicant has failed to meet his burden of demonstrating error below. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). “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
Chair, Appeal Board

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

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