

Date: July 26, 2023

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In the matter of:)	
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-----)	ISCR Case No. 20-01654
)	
Applicant for Security Clearance)	
)	

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 August 26, 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 June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On May 31, 2023, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR, as amended, alleged that Applicant failed to timely file his Federal and state tax returns for tax years 2013 through 2017, and that he carried delinquent Federal and state tax balances totaling approximately \$36,000. The Judge found that, although Applicant had filed his delinquent returns, he had done so at various times in 2022, “well past the issuance of the SOR.” Decision at 4. The Judge similarly found that Applicant had repaid some of his delinquent tax balances, but some of the payments post-date the issuance of the SOR. Decision at 4-5. In finding

adversely on all allegations, the Judge concluded that Applicant's efforts were "not enough at this time to overcome his repeated failures or inability to address his tax-filing and tax-paying responsibilities in a timely way over the course of many years." Decision at 9.

On appeal, Applicant first reiterates information regarding his mental health and anxiety attacks, and how those impacted his tax delinquencies. Appeal Brief at 2. These matters were discussed at length during the hearing (*see* Tr. at 26-31, 39-41, 44-45, 84-88) and addressed in the Judge's decision (*see* Decision at 3), and Applicant has not established that the Judge committed any harmful error in his findings of fact about, or analysis of, this information.

Applicant also argues that the Judge cut off his testimony regarding his legal residence for tax filing purposes. Appeal Brief at 6. Our review of the transcript reflects that Applicant thoroughly addressed his residency in response to questions posed directly by the Judge. Tr. at 80-83. Although the Judge interrupted Applicant several times, it appears to have been in an effort to clarify and confirm Applicant's answers. At the conclusion of the hearing, Applicant was afforded an opportunity to add additional information based on the Judge's questions and, through counsel, he declined. Tr. at 89. There is no basis in the record to support that Applicant was denied an opportunity to present his case or to conclude that he was denied due process. *See, e.g.*, ISCR Case No. 09-06224 at 3 (App. Bd. Jan. 20, 2011).

Applicant next asserts that the amounts alleged as being owed to the various state taxing authorities were inaccurate. Appeal Brief at 3. The amounts alleged in the SOR were drawn from Applicant's own documentation, which included his Federal and state tax returns as drafted by his tax preparer in January 2022. *See* AE F at 74, 86, 106-109, 175, 177. This argument is therefore without merit.

Applicant's remaining argument on appeal appears to stem from his assertion that he has filed his delinquent tax returns and paid all balances owed. An applicant's correction of past tax problems, however, does not compel a judge to issue a favorable decision. *See, e.g.*, ISCR Case No. 17-01807 at 4 (App. Bd. Mar. 7, 2018). Rather, a judge must examine the record and consider an applicant's security clearance worthiness in light of such longstanding behavior that evinces irresponsibility. A judge must consider the timing of any corrective action, both when evaluating mitigating condition AG ¶ 20(g), which applies specifically to taxes, as well as other overlapping mitigating conditions. *Id.* (timing should also be considered "in determining whether an applicant acted responsibly under the circumstances, whether an applicant's past financial deficiencies are unlikely to recur, or whether an applicant initiated good-faith efforts to resolve financial problems").

In his October 2017 security clearance application, Applicant disclosed that he had not filed his Federal and state income taxes since tax year 2013. Government Exhibit (GE) 1 at 82-84. He reiterated those tax deficiencies during his January 2019 clearance interview, explaining that the failures were due to not understanding the different tax brackets and filing statuses, and because he moved several times during that period and lost receipts for deductions and write-offs. GE 2 at 4. The SOR was issued in this matter in August 2021 and Applicant acknowledged receipt of the same in December 2021; however, he did not file his 2014 and 2015 Federal returns until mid-2022, and his 2013 return remained unfiled until October 2022, five years after beginning this

security clearance process. Moreover, it is unclear from the record that Applicant's 2016 and 2017 Federal returns have been filed at all, as the returns created by the tax preparer in early 2022 for Applicant's submission reflect a filing status of Married Filing *Jointly*, while his Tax Account Transcripts reflect that substitute returns were prepared by the Internal Revenue Service with a filing status of Married Filing *Separately*. See Applicant Exhibit (AE) F at 117, 185; AE J at 251, 254.

In spite of Applicant's protestations that he began addressing his tax problems prior to receipt of the SOR, it is incontrovertible that his tax problems were longstanding, and that he took little to no action to address the problems until after his clearance reinvestigation began. Applicant appears to simply disagree with the weight that the Judge placed on his corrective actions; however, a party's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that 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