		Date: October 25, 2023
	)	
In the matter of:	)	
	)	ISCR Case No. 22-00424
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 May 15, 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 September 7, 2023, Defense Office of Hearings and Appeals Administrative Judge Philip J. Katauskas denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged four financial concerns, including that Applicant failed to file her Federal income tax return for tax year 2013, that she was indebted to the Federal Government and her state tax authority for delinquent taxes beginning in 2009 for approximately \$35,000 and \$37,000, respectively, and that she had one minor delinquent consumer debt. Noting that Applicant had resolved the consumer and state tax debts, and had filed her 2013 Federal tax return, the Judge found favorably for her on those allegations. With respect to the Federal tax debt, however, the

amount actually owed was approximately \$200,000 and Applicant had only recently submitted an Offer in Compromise, which was still pending as of the hearing. The Judge noted that, even if the Offer in Compromise is approved, the monthly repayment terms proposed by Applicant "seem unrealistic to meet," considering her overall financial picture. Decision at 6. Accordingly, the Judge found against Applicant regarding her Federal tax debt and concluded that the security concerns raised thereby were not mitigated.

On appeal, Applicant challenges the Judge's analysis under the Whole-Person Concept, arguing that the adverse decision focused solely on financial considerations, but the totality of her personal and professional history demonstrates that she meets the standards necessary to be granted eligibility for access to classified information. This argument is without merit.

Applicant's ongoing tax debts raise concerns that she may be lacking in qualities expected of those with access to classified information. Indeed, the Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security suitability. See, e.g., DISCR OSD Case No. 92–1106, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993). The record reflects that Applicant owes approximately \$200,000 for tax years beginning with 2009. It is well-settled that an individual who is unwilling to fulfill her legal obligations to the Federal Government – such as paying income taxes as required – 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."). Applicant's argument amounts to a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate that he 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 also submits new evidence in the form of a narrative update on the status of her Federal Offer in Compromise and state tax debt and documentation regarding her taxes and other debts. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

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."  $AG \P 2(b)$ .

## 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