



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: November 29, 2023

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In the matter of: )  
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Applicant for Security Clearance )  
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ISCR Case No. 22-00747

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 2, 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 of Security Executive Agent Directive 4 (effective June 8, 2017) (AG) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On September 26, 2023, after close of the record, Defense Office of Hearings and Appeals Administrative Judge Robert E. Coacher denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the Judge’s decision.

The SOR alleged that Applicant failed to file, as required, his Federal income tax returns for 2015 to 2021 and his state income tax returns for 2015 to 2016 and 2018 to 2021. Although the Judge found against Applicant on both allegations, he determined that Applicant timely filed his 2017 Federal income tax return. Even though Applicant eventually filed all but one of the alleged tax returns, the Judge concluded that Applicant failed to mitigate the alleged Guideline F security concerns, noting he failed to show that he acted responsibly regarding his tax filing obligations.

On appeal, Applicant’s Counsel does not challenge any of the Judge’s findings of fact. He does mention that the “Judge found that mitigating factors under Guideline F were insufficient to overcome the concerns about [Applicant’s] alcohol use, reliability, trustworthiness, judgment, and honesty.” Appeal Brief at 7-8. Concerns about Applicant’s alcohol use were neither alleged in the SOR nor discussed in the Judge’s decision. Furthermore, the Judge made no negative findings or conclusions about Applicant’s honesty.

The arguments that Applicant’s Counsel raises in the appeal brief amount to a disagreement with the Judge’s weighing of the evidence; however, none of his arguments are sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.132.3

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 the interests of the 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: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board