



**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: November 7, 2023

In the matter of:)
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)
Applicant for Security Clearance)
_____)

ISCR Case No. 22-00922

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 June 13, 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 June 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. In an undated SOR amendment, the original two SOR allegations were revised, and nine other Guideline F allegations were added. Applicant answered the amended SOR on March 7, 2023. On September 14, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Eric H. Borgstrom 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.

As amended, the SOR alleged that Applicant failed to file Federal and state income tax returns from 2013 to 2020 as required; that he owed the Federal Government over \$9,000 in delinquent taxes for 2015 through 2019; and that he had four judgments filed against him totaling about \$7,000. In responding to the amended SOR allegations, Applicant admitted all but one of

them. He denied a judgment totaling about \$1,200. The Judge found in favor of Applicant on a judgment totaling about \$960 and against him on the other allegations. In summarizing the case, the Judge stated:

Applicant has filed his previously unfiled tax returns, largely resolved his tax liabilities, and paid four judgments. Notwithstanding his recent efforts, he knowingly and willfully violated Federal tax laws for about eight years. His actions do not reflect the good judgment, reliability, and adherence to laws and regulations required of one entrusted to safeguard classified information. Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied. [Decision at 1.]

On appeal, Applicant claims that he was given misleading or conflicting information about his tax delinquencies. In this regard, he states, “I was supposed to be given the opportunity to mitigate the failure to file with an explanation, and repeatedly I was told, in essence, it is both against the law, and there are no repercussions of any real harm; therefore my apprehension/fear was unfounded. That simply isn’t true.” Appeal Brief at 2. Regarding this issue, the Judge found that, in October 2021, an “IRS representative disabused [Applicant] of his belief about being jailed” for being unable to pay his tax liability. Decision at 5. To the extent that Applicant is arguing that his fear of being jailed justified or mitigated his failure to file his income tax returns or to pay his taxes as required, we do not find that argument persuasive. A judge is responsible for evaluating the evidence, determining its weight, and drawing conclusions about pertinent issues. None of Applicant’s arguments are enough to establish that any of the Judge’s conclusions in this case were arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Applicant challenges the Judge’s finding that he owed about \$300 in state taxes for 2013. As support for this assertion of error, Applicant points to his unsigned and undated 2013 state tax return that reflects he owed no additional income taxes for that year. Applicant Exhibit (AE) EE1 at 3. The Judge found that Applicant filed this tax return in late July 2022. Decision at 5. In his appeal brief, Applicant also claims that he spoke with a state tax authority who assured him that he owed nothing further for 2013. On the other hand, a state tax transcript for 2013, which reflects a “process date” of August 5, 2022, indicates that Applicant still owed \$336 in state taxes for that year. AE GG1 at 4. A Judge is tasked to resolve apparent conflicts in the evidence. *See, e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). From our review of the evidence, we find no error in the Judge’s finding that Applicant still owed state income taxes for 2013. It also merits noting that Applicant’s 2013 state tax debt is of minor significance because it was not alleged in the amended SOR.

Applicant also challenges some of Department Counsel’s questions, comments, or arguments but fails to show that any of those statements resulted in harmful error. He asserts that the amended SOR alleged “wildly inaccurate” amounts owed to the IRS, that Department Counsel “had to send it three times, because she kept making mistakes,” and that it made assertions prefaced with the phrase, “As of the date of this SOR,” but it was not dated. Appeal Brief at 3. These assertions of error do not merit any relief. In responding to the amended SOR, Applicant admitted each of the Federal tax debt allegations without submitting any comments. His admissions established those allegations. Additionally, there is no reason to conclude that

Applicant was prejudiced by any purported errors in the amended SOR that were eventually corrected.

In short, none of Applicant's assertions in his appeal brief 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. "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: 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