



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: April 29, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 23-00899
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 1, 2023, 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 February 21, 2024, 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 alleged that Applicant failed to timely file Federal and state income tax returns for tax years 2009-2011 and 2017-2018. He is also alleged to be indebted for state taxes for tax years 2017 to 2018, totaling approximately \$10,246. The Judge found against Applicant on the two failure to file allegations. Although he failed to make a formal finding on the state tax debt, the Judge found no applicable mitigating conditions in his analysis, and we interpret his decision as an adverse finding on that allegation as well.

In Applicant's appeal brief, he points out factual errors in the Judge's decision, and submitted new evidence. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in his mid-50s and has been employed by a defense contractor as an information technology specialist since September 2019. He attended college classes and earned certificates in 2019. He enlisted in the Air National Guard (ANG) in 1995 and served 17 years of active duty before his retirement in 2017. While on active duty with the ANG, Applicant served in a dual role as an active-duty service member and civilian employee. He has never held a security clearance, and he did not submit any exhibits for the Judge's consideration.

Tax records document that Applicant did not timely file his Federal and state income tax returns for tax years 2009-2011 and 2017-2018. Tax records also document Applicant's indebtedness to a state tax authority for approximately \$10,246, for tax year 2018. Applicant attributed his 2009-2010 tax-filing lapses to procrastination, and his 2017-2018 tax-filing failures to his mistaken reliance on a prior accountant he engaged to file his returns for those years. Applicant acknowledged that his 2009-2011 Federal tax returns were substitute-filed by the Internal Revenue Service (IRS) and that his pay was garnished to satisfy IRS-calculated taxes owed. His reliance on a prior accountant was never documented. Additionally, any attempts to satisfy his state tax debts for tax years 2017-2018 are undocumented and unresolved.

The Judge held that without any evidence of IRS and state approved extensions of time to file Federal and state tax returns, or satisfaction of the state tax debt, no mitigating condition applied. Applicants for security eligibility are expected to exercise diligence and care in meeting their financial responsibilities.

Discussion

In his appeal brief, Applicant claims that the Judge erred in certain factual findings with regard to his background, and he included additional evidence explaining his tax status and showing efforts to resolve debts.

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

We agree that the Judge made factual errors in describing Applicant's background, including his military service, dates and types of employment with the National Guard, characterization of certification training as college classes, and not recognizing his previous

security eligibility. In particular, Applicant states that he served on active duty from 1985 to 1995 and in the ANG from 1997 to 2017. He was also hired by the Army National Guard (ARNG) as a help-desk specialist from 2019 to 2020, and in his current position in 2020 as an information systems security officer. He states that he did not attend college courses, rather it was a cybersecurity “bootcamp,” and that he held various security clearances since 1985. The Judge’s confusion regarding certain background information, however, constitutes harmless error because it does not likely affect the outcome of the case. ISCR Case No. 19-01431 at 4 (App. Bd. Mar. 31, 2020).

Our review of the record confirms that Applicant failed to file Federal and state tax returns when due and that he failed to demonstrate that he resolved his state tax debt when due. Guideline F recognizes that applicants who do not act responsibly in the handling of their finances, such as filing tax returns when due, may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *Id.*

Additionally, possession of a previously granted clearance does not give rise to any right or vested interest, nor does any favorable clearance decision preclude the Government from reassessing a person’s security eligibility in light of current circumstances. ISCR Case No. 03-24144 at 6 (App. Bd. Dec. 6, 2005). Finally, with regard to additional or clarifying evidence presented on appeal, the Appeal Board is prohibited from considering new evidence on appeal and does not review cases *de novo*. 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 ¶ 2(b).

ORDER

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board