



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: May 23, 2024

In the matter of:)	
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-----)	ISCR Case No. 22-00932
)	
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 November 7, 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) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 5, 2024, Defense Office of Hearings and Appeals Administrative Judge Robert Robinson Gales denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged seven financial concerns: that Applicant filed a Chapter 13 bankruptcy in 2013 that was converted to a Chapter 7; that she failed to file federal and state income tax returns for tax years 2015 through 2021; that she was indebted to the federal government for delinquent taxes of approximately \$47,800; that she was indebted to her state government for delinquent taxes of approximately \$18,100; and that she was delinquent on a medical account and two consumer accounts. The Judge found favorably for Applicant on two allegations—her federal tax delinquency and the medical account debt—and adversely on the remaining allegations. On

appeal, Applicant challenges the Judge's findings of fact and the conclusions that he drew from them. For the reasons detailed below, we affirm.

Judge's Findings of Fact: The Judge's findings of fact relevant to the adverse findings are summarized and quoted below.

Applicant is in her early forties and has been serving as a senior program manager and budget analyst with her current employer since 2015. She graduated from high school in the late nineties and served on active duty for four years and in the reserve force for three more. She has held security clearances of varying levels since about 2002. Applicant married in 2012 and divorced in 2014, and she remarried in 2016 and divorced in 2017. The Judge stated that "Applicant has had a lengthy history of financial troubles that commenced before June 2013" (Decision at 3) and made the following findings regarding the individual allegations:

SOR ¶ 1.a. refers to a Chapter 13 bankruptcy that was filed in 2013 but subsequently converted to a Chapter 7 filing, with a discharge in 2015. Applicant made monthly payments totaling approximately \$22,700 under the Chapter 13 plan but was unable to continue payments when her husband's unemployment benefits ended. At that point, she divorced her husband and converted to a Chapter 7.

SOR ¶¶ 1.b. and 1.c. refer to the same account with two different creditors, each with an unpaid balance of approximately \$9,400. Applicant asserted that the account was a medical debt accrued by her ex-husband and that she had disputed the accounts with the credit reporting agencies. The Judge found, however that "Applicant failed to submit any documentation to support her contentions that the account was a medical account, that it was for her ex-spouse, that she disputed it, or that she is not legally responsible for it." *Id.* at 4.

SOR ¶ 1.e. refers to Applicant's failure to timely file federal and state income tax returns for tax years (TYs) 2015 through 2021. Applicant admitted that she failed to file federal and state returns during the years alleged, but there is inconsistent evidence regarding some of the TYs in issues.

Federal Tax Returns: For TYs 2016 through 2021, Applicant stated in her response to interrogatories that she filed her federal returns in August 2022,¹ and IRS transcripts confirm receipt of the same. The federal returns for TYs 2016 through 2021 have been filed, although they were not timely filed. For TY 2015, Applicant stated in her response to interrogatories that she also mailed that return in August 2022, but there is no corroborating evidence as Applicant did not submit a tax account transcript to confirm that it was filed.

¹ Although the Judge refers repeatedly to Applicant not specifying the year that she filed, it is clear in context from her response to interrogatories, as corroborated by tax account transcripts, that she filed in August 2022, as she avers in her appeal. Similarly, for TYs 2019–2021, the Judge highlights that the date Applicant recorded as e-filing is one to two days later than the date that the IRS acknowledges as receiving the filing and that "[t]here was no explanation regarding the inconsistency of the filing dates listed by Applicant and the IRS." Decision at 5, 6. The Board agrees with Applicant that this is a minute discrepancy of no probative value.

State Tax Returns: Applicant reported in her response to interrogatories that she did not file her state returns until August 2022,² and she did not submit any tax account transcripts to corroborate her claim that she submitted the returns at that time. Applicant eventually submitted documentation from the state comptroller indicating seven payments in 2023 totaling approximately \$4,300, four of which were made under an installment agreement. The Judge found, however, that “[n]one of the payments or receipts for those payments indicate which tax year they are associated with.” *Id.* at 6. Therefore, there is “no verifying evidence to conclude” that the tax returns for TYs 2015 through 2021 were filed, but instead “merely evidence that some payments have been made to the state.” *Id.*

SOR ¶ 1.g. refers to Applicant’s state income tax delinquency of approximately \$18,100, which Applicant reported in her August 2022 response to interrogatories, noting that the estimated balance did not include any offsets. As of late November 2023, her installment agreement reflected a balance of approximately \$16,700, with monthly payments of approximately \$612. “Interestingly, in December 2022, she claimed that the unpaid balance had been reduced to zero with a suspected overpayment to be transferred to the IRS. It appears that her contention . . . was in error.” *Id.* at 7. Moreover, the Judge noted, the documents submitted reflect payments to the state commenced in May 2023, six months after the SR was issued. “After multiple years of nonpayment of her state income tax, Applicant finally started making those payments. . . [and] is finally in the process of resolving her state income tax debt.” *Id.*

Judge’s Analysis: The pertinent portions of the Judge’s analysis are quoted and summarized below.

Applicant has a lengthy history of financial problems. In June 2013, she filed for voluntary bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, estimating \$72,000 in liabilities. Two years later, she had the bankruptcy converted to a Chapter 7 bankruptcy and an unspecified amount was reportedly discharged. She failed to timely file her federal and state income tax returns for the multi-year period from 2015 through 2021. She also incurred a federal income tax debt of \$47,806 and a state income tax debt of \$18,103. In addition, she had three delinquent commercial accounts. It was not until September and October 2022, over a year after she was interviewed by OPM and within a week after the SOR was issued, that the federal and state income tax returns were purportedly filed. [*Id.* at 9–10.]

The following disqualifying conditions have been established: AG ¶¶ 19(a), 19(b), 19(c), and 19(f).³

² Again, although the Judge refers to Applicant not “specifying the year” that she filed, it is clear in context from her August 31, 2022, response to interrogatories and other evidence of record that she was referring to filing earlier in August 2022.

³ AG ¶¶ 19 (a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; and (f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay federal, state, or local income tax as required.

The following mitigating conditions minimally apply: AG ¶¶ 20(b), 20(d), and 20(g).⁴ Applicant acknowledged having some financial issues as far back as before June 2013 when she filed for Chapter 13 bankruptcy. Despite an unspecified amount of those debts being discharged after her bankruptcy was converted to a Chapter 7 in 2015, she continued to experience financial difficulties. Disgruntled over a federal income tax refund that was erroneously sent to her ex-spouse and cashed by him, she “let the situation get out of hand.” *Id.* at 11. She sued the bank, failed to timely file her federal and state income tax returns for the tax years 2015 through 2021, failed to pay her federal and state tax debt on time, and accrued other delinquent accounts. *Id.*

Applicant completed her security clearance application in August 2021, underwent her interview in October 2021, and completed responses to interrogatories in August 2022. “Each step of the security clearance review process placed her on notice of the significance of the financial issues confronting her.” *Id.* at 12. The evidence confirms that Applicant filed her federal returns the same week that she responded to the interrogatories, and it remains unclear as to when the state income tax returns were filed. “By failing to file her federal and state income tax return filings and not making voluntary payments over such a lengthy multi-year period before the government showed interest in her tax issues, Applicant did not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.” *Id.*

In his whole-person analysis, the Judge determined that, although there is “some mitigating evidence under the whole-person concept,” the “disqualifying evidence under the whole-person concept is simply more substantial.” *Id.* at 14. He noted:

Applicant has had a lengthy history of financial troubles that commenced before June 2013. That month, she filed for voluntary bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, estimating \$72,000 in liabilities. After her liabilities were discharged under Chapter 7, her financial issues continued, and because of problems related to her 2014 divorce, changes made to joint tax-filings by her ex-spouse, and the acceptance by the IRS of such changes related to her personal information, she failed to timely file her federal and state income tax returns or pay her federal and state income tax for the tax years 2015 through 2021.

Applicant has continued to fail to submit requested verifying documentation—correspondence, account transcripts, or copies of income tax returns—to support her contentions that she has filed her delinquent state income tax returns. And her previously made statement that her remaining state income tax balance was zero as of December 2022 turned out to be false. In fact, Applicant’s first state income tax payment was made in May 2023 – six months after the SOR was issued. [*Id.* at 14.]

⁴ AG ¶¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person’s control and the individual acted responsibly under the circumstances; (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Discussion

On appeal, Applicant challenges several of the Judge's findings of fact, as well as the conclusions that he drew from them. When an Administrative Judge's factual findings are challenged, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive, E3.1.32.1. The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole. ISCR Case No. 02-12199 at 2–3 (App. Bd. Aug. 8, 2005).

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. ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

First, Applicant challenges the Judge's finding that she has a "a lengthy history of financial troubles that commenced before June 2013." Decision at 3. We agree that the Judge mischaracterized the scope of Applicant's financial problems at several points in his decision. For example, the Judge summarized the case as follows: "This case involves three separate issues: the failure to timely file federal and state income tax returns, the failure to pay federal and state income taxes, and *lengthy continuing financial problems leading to bankruptcies and still-delinquent debts.*" *Id.* at 11 (emphasis added). Putting aside the tax issues, the allegations and evidence reveal few other financial issues of security concern. The bankruptcy was filed 11 years ago and discharged nine years ago, the liabilities subject to the bankruptcy were relatively limited, and Applicant paid over \$22,000 under Chapter 13 prior to converting to Chapter 7 in the wake of her divorce. Likewise, although the Judge refers frequently to continued financial delinquencies, the allegations and evidence highlight only two: a \$30 co-pay that Applicant has belatedly paid and a disputed \$9,400 commercial account that was alleged twice.⁵ The Judge's finding that Applicant has "lengthy continuing financial problems leading to bankruptcies and still-delinquent debts" reflects an unreasonable interpretation of the record evidence as a whole. *Id.* at 11. We conclude, however, that this error is harmless, as the Judge's decision rested overwhelmingly on Applicant's

⁵ Although the Judge acknowledged that the two allegations refer to the same debt, he erroneously entered adverse formal findings on both, which is highlighted by Applicant on appeal. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). Although his formal findings were in error, the Judge explicitly recognized that the two debts were one and the same, and his error was harmless, as it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 95-0495 at 4 (App. Bd. Mar. 22, 1996) (remand or reversal required only where there is a significant chance that, but for the error, a different result might have been reached, citing *NLRB v. American Geri-Care*, 697 F.2d 56, 64 (2nd Cir. 1982), *cert. denied*, 461 U.S. 906 (1983)).

failure to timely file and pay her state and federal income taxes and not on her bankruptcy and delinquent debt. *See* ISCR Case No. 95-0495 at 4.

Turning to the tax issues, Applicant challenges the following findings by the Judge: that she provided no proof of filing of her federal return for TY 2015; that she provided no state tax transcripts for any of the years in issue (TYs 2015 through 2021), only proof of payments⁶; that she did not provide a copy of her federal or state installment plan; and that she made a false statement in her December 2022 Answer to the SOR in stating that her state tax balance was zero. In response, Applicant asserts that she had discovered upon filing for TY 2015 in August 2022 that she had in fact filed on time, that she reported the same at her hearing, and that she understood that tax year to be no longer in issue; that she was not asked to provide state tax transcripts for any tax years; and that she provided all available state tax information. Additionally, Applicant argues that her December 2022 statement regarding her state tax debt was made in good faith, as her state tax authority advised Applicant that they would intercept her federal tax returns for TYs 2018–2022 and apply those funds to her tax debt.⁷

For TY 2015, we note that Applicant herself reported that she was delinquent in filing her TY 2015 federal tax return and paying the taxes due, that TY 2015 was alleged on the SOR, and that Applicant admitted to that allegation. Government Exhibit 2 at 9, 17; Answer to SOR. In a DOHA proceeding, it is an applicant’s duty to present evidence in mitigation of the concerns raised in her SOR. Directive E3.1.15. The Judge’s determination that Applicant failed to do so is sustainable on this record, as she submitted no documents to corroborate her testimony that she had earlier filed her TY 2015 federal return. On the issue of state taxes, although Applicant provided some documents that were responsive to the allegations, the Judge’s conclusion that those documents were insufficient is sustainable on the record before us. It is neither the Judge’s nor Department Counsel’s duty to advise an applicant on the evidence needed to mitigate the concerns raised in an SOR (*i.e.*, to submit comprehensive tax account transcripts rather than receipts for individual payments). Although *pro se* applicants are not held to the standards of attorneys, they are expected to take reasonable steps to protect their rights. ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014).

Finally, the Judge’s analysis regarding Applicant’s belated filing and payment of federal taxes is well-grounded in the precedent to which he cites. Although Applicant has filed all federal returns and paid almost all of the federal tax debt, the Judge highlighted that Applicant did not take action on filing her returns or paying delinquent taxes until “the government showed interest in her tax issues.” Decision at 12. The Appeal Board has held that the mere filing of delinquent tax returns or paying delinquent tax debt does not compel a judge to issue a favorable decision and that the timing of corrective action is an appropriate factor for a judge to consider in the application of AG ¶ 20(g). *See, e.g.*, ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018).

⁶ As Applicant notes, the Judge erred in his finding that “[n]one of the payments or receipts for those payments indicate which tax year they are associated with.” *Id.* at 6. The receipts for three of the payments indicate that they were made towards delinquencies for TY 2015, TY 2016, and TY 2017. Applicant Exhibits M, N, and O. This error is harmless, as it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 95-0495 at 4.

⁷ Ultimately, the state was only able to intercept three of the five refunds, and a state tax delinquency remained.

In conclusion, 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