

The Judge's Findings of Fact and Analysis

Applicant is in his late 60s. He retired from the military in 1999 and has been employed by defense contractors since 2002, with intermittent periods of unemployment. He admits that he failed to file federal and state tax returns for 2018 through 2022 and that he owes delinquent federal income taxes for tax years 2011 through 2017. After obtaining assistance from a tax attorney, he filed his federal income tax returns for 2018 through 2022 in October 2023. Applicant owes approximately \$16,000 in delinquent taxes for those years, in addition to what he owes for 2011 through 2017. He hopes to reach a settlement with the IRS. Applicant also filed his delinquent state tax returns for 2020, 2021, and 2022 in October 2023 and filed his state tax returns for 2018 and 2019 in December 2023. He also admits to owing the student loan debts alleged in the SOR for which no payments have been made since 2014. Shortly before commencement of the hearing, Applicant began to address these loans with the assistance of a private company and now is enrolled in the Department of Education's Fresh Start program. However, there is no evidence that any payments have been made on those loans.

Not alleged in the SOR was the fact that Applicant owes approximately \$11,000 in state taxes and that he also filed his 2014 through 2016 federal tax returns late. This was not considered for disqualifying purposes but was appropriately considered in the application of mitigating conditions and in the Judge's whole-person analysis.

Applicant attributes his financial difficulties to his periods of unemployment, multiple marital breakups, and his adult son's and his ex-wife's medical issues.

In light of these facts, the Judge concluded that, although there were some circumstances beyond Applicant's control, he had not established that he acted responsibly and in good faith to address and resolve his financial obligations.

Discussion

On appeal, Applicant challenges certain facts and states that he is "rebutting" the Judge's decision. When an administrative judge's factual findings are challenged, the Board must determine whether the 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 and whether the judge's findings reflect a reasonable interpretation of the record evidence as a whole. Directive ¶ E3.1.32.1; 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).

The Government's burden is to prove its case by substantial evidence, which was clearly met in this instance through Applicant's admissions, his testimony, and the documentary evidence.

Once the Government established a *prima facie* case against him, Applicant had the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue a security clearance. Thus, the burden was on Applicant to present witnesses and other evidence to rebut, explain, extenuate, or mitigate the security concerns raised by his failure to timely file his tax returns. Directive ¶ E3.1.15.

Applicant's challenge largely conflates "facts" with the Judge's "conclusions." Regardless, however, of whether considered to be facts or conclusions, the allegations of error are without merit because the Judge's factual findings and conclusions are amply supported by the record. It is undisputed that the tax returns at issue were not filed until years after they were due, that taxes are owed, and that the student loans are delinquent. Our review of the Judge's decision confirms that he considered all relevant issues and properly applied the mitigating conditions.

Voluntary compliance with rules and systems is essential for protecting classified information. ISCR Case No. 14-06686 at 3 (App. Bd. Apr. 27, 2016). A person who repeatedly fails to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *E.g.*, ISCR Case No. 15-05478 at 4 (App. Bd. Oct. 2, 2017). We have noted that "[a] security clearance represents an obligation to the Federal Government to protect national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on assessing an applicant's reliability, trustworthiness, and ability to protect classified information." *Id.* Applicant's failures to comply with federal and state tax laws and to timely pay his federal student loan debt suggest that he has a problem with voluntarily abiding by well-established government rules and regulations, which calls into question his suitability for a security clearance.

Applicant's appeal is premised on the incorrect belief that he mitigated the Government's concerns because he eventually filed his delinquent tax returns and entered a payment program with the Department of Education. However, as the Judge noted, a security clearance adjudication is not a proceeding aimed at inducing an applicant to meet his financial obligations. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Decision at 7. *E.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). Accordingly, the Judge was obligated to consider the facts and circumstances surrounding the failure to timely meet Applicant's tax-filing obligations. Similarly, even though Applicant has recently taken steps to enter the Department of Education's Fresh Start program, this does not erase Applicant's past failure to address his student loans.

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because "an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests." ISCR Case No. 15-05478 at 5. Evidence suggesting that, after years of apparent inattention, Applicant was finally energized to file his tax returns when his clearance eligibility might be imperiled raises questions about his willingness to follow the rules governing classified information when his personal interests are not at stake.

Overall, Applicant's brief advocates for an alternative weighing of the evidence. An applicant's "disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, there is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise, and a bare assertion that the Judge did not consider evidence is not sufficient to rebut that presumption. *E.g.*, ISCR Case No. 19-03344 at 3 (App. Bd. Dec. 21, 2020).

Applicant has failed to establish any harmful error below. The Judge appropriately considered circumstances beyond Applicant's control such as his periods of unemployment and his son's and ex-wife's medical conditions. The overall record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision 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 in ISCR Case No. 23-01447 is **AFFIRMED**.

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board

Signed: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board