



**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: January 29, 2025

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

ISCR Case No. 23-02914

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Grant Couch, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 2, 2024, 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 December 3, 2024, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged six financial concerns related to Applicant’s federal taxes: that Applicant failed to pay her federal taxes for at least tax years 2018 through 2022 and that she owed varying amounts for those five years, totaling approximately \$17,500. In her Answer to the SOR, Applicant admitted all allegations, and the Judge found adversely to Applicant on all allegations. On appeal, Applicant asserts that the Judge failed to consider all the evidence in mitigation, rendering his decision arbitrary and capricious. For the reasons detailed below, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is in her mid-forties and has held security clearances between 2008 and 2024. Applicant attributed her tax delinquencies to excessive exemptions that she took to cover medical bills. Although Applicant entered installment agreements with the IRS for tax years 2018 and 2019, she allowed them to lapse without payments, and she did not enter agreements for tax years 2020 through 2022. Applicant has, however, made payments totaling about \$300 outside of installment agreements. Applicant is current with all of her other debts, earns \$100,000 annually, and regularly contributes to a retirement plan. In light of Applicant's "repeated failures or inability to address her federal tax-paying responsibilities in a timely way," the Judge concluded that "none of the potentially available mitigating conditions are available to her." Decision at 6, 7.

Discussion

Applicant does not challenge any of the Judge's specific findings of fact. Rather, she contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. She argues, for example, that the Judge did not give appropriate weight to the circumstances surrounding the delinquencies and her ongoing efforts to resolve them. None of her arguments, however, are sufficient to rebut the presumption that the Judge considered all of the evidence in the record. ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In asserting that the decision is arbitrary and capricious, Applicant is basically arguing for the Judge to weigh the evidence differently. For example, Applicant argues that the Judge "entirely omits consideration of whether the incident creates the potential for pressure, coercion, exploitation, or duress." Appeal Brief at 6. The Judge, however, explicitly addressed this issue, noting that "[w]hile the principal concern . . . is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts." Decision at 6. 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.

Additionally, Applicant relies on hearing-level decisions in other cases to argue the Judge erred in his analysis of this case. As the Board has consistently stated, how particular fact scenarios were adjudicated in other cases is generally not a relevant consideration in the Appeal Board's review of a case. None of the hearing-level decisions that Applicant cites are sufficient to show the Judge erred in his analysis of this case.

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.'" *Dep't 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. 23-02914 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