



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: February 25, 2025

In the matter of:

Applicant for Security Clearance

ISCR Case No. 23-01591

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 29, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 January 8, 2025, Defense Office of Hearings and Appeals Administrative Judge Erin C. Hogan denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Discussion

The SOR alleged three financial concerns: that Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$544,500 for tax years 2014, 2015, 2016, 2018, and 2019 and that the federal government has filed a tax lien against him; that he is indebted to his state of residence for approximately \$107,600 in delinquent taxes for those same tax years and that his state has filed tax liens against him; and that a judgment was entered against

Applicant in 2019 in the approximate amount of \$92,200 and remains unpaid. Under Guideline E, the SOR alleged that Applicant falsified his security clearance application (SCA) in failing to disclose his federal and state tax delinquencies. In his answer to the SOR, Applicant admitted the Guideline F allegations and denied the falsification allegation. The Judge found adversely to Applicant on all allegations.

Applicant is in his early sixties and the sole owner of a defense contracting company. He earned a master's in business administration. A veteran, Applicant has held a security clearance for over 30 years. Applicant separated from his first wife in 2018, and they divorced in 2021. Regarding the Guideline F allegations, the Judge concluded that Applicant's federal and state tax problems "were an issue of his own making," as he had the income but chose not to withhold sufficient funds to meet his tax obligation each year. Decision at 8. In finding that no mitigating conditions fully apply, the Judge highlighted that Applicant's delinquent tax debts and his unpaid judgment debt are ongoing, that he ignored his tax problems for years, that no payment plans are yet in place, and that, during the years that Applicant incurred these debts, he traveled internationally and bought a home for over \$1 million. Under Guideline E, the Judge found that Applicant deliberately failed to disclose his delinquent federal and state tax debts on his SCA. She rejected Applicant's explanation that he was confused by the question as not credible in light of several factors, including that Applicant is highly educated, owns his own defense contracting business, and has held a security clearance for over 30 years.

On appeal, Applicant asserts that the Judge failed "to consider a critical piece of exculpatory evidence," the February 2021 marital separation agreement between Applicant and his first wife, under which the parties agreed that "Husband shall be solely responsible for the outstanding balances of these [federal and state] tax debts." Appeal Brief at 1; Applicant Exhibit A at 7. Applicant argues that the Judge ignored the fact that "the obligation was a marital debt later assumed voluntarily by the Applicant" and that "its voluntary assumption should be viewed as a responsible act rather than a sign of financial irresponsibility." Appeal Brief at 2.

To the extent that we understand this argument, we find it frivolous. At hearing, Applicant affirmed that he is "individually responsible for the taxes" under the separation agreement. Transcript at 81. Regardless, the Judge's analysis and conclusions remain equally valid even were Applicant instead jointly liable for these tax delinquencies. Contrary to Applicant's argument, the Judge did not find that Applicant acted irresponsibly in **assuming** the tax debt. Instead, she found that he acted irresponsibly in **accruing** delinquent tax debt of over \$650,000, highlighting that he neglected to pay his federal and state income taxes for more than three years before his marital separation and that he "continues to withhold insufficient funds to pay his federal and state income taxes even though his accountant advised him to do this years ago." Decision at 9. None of Applicant's argument are sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *E.g.*, ISCR Case No. 06-17409 at 2 (App. Bd. Oct. 12, 2007).

Conclusion

There is no presumption of error below and the appealing party has the burden of demonstrating that the judge committed factual or legal error. *See* ISCR Case No. 00-0050 at 2 (App. Bd. Jul. 23, 2001). Applicant has not met this burden. 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 in ISCR Case No. 23-01591 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board