



Date: February 27, 2025

In the matter of:

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# Applicant for Security Clearance

ISCR Case No. 24-00658

## 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 May 23, 2024, 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 January 8, 2025, Defense Office of Hearings and Appeals Administrative Judge Philip J. Katauskas denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

## Discussion

The SOR alleged that Applicant failed to file, as required, his federal and state income tax returns for tax years 2018 through 2022 and owed a federal tax balance of about \$5,400. In response to the SOR, Applicant admitted the tax concerns, explaining that all returns had been filed and that he was on a repayment plan for the federal tax debt, and he requested that his case be decided based on the written record. Applicant received a complete copy of the Government's

File of Relevant Material (FORM) on September 17, 2024, and was notified of his ability to respond with any objections or additional information for the Judge to consider. Applicant did not respond to the FORM and the Judge found against him on all allegations. On appeal, Applicant challenges two findings regarding evidence that he contends he provided but that was not considered. For the following reasons, Applicant's challenges are unpersuasive.

The record reflects the following information pertinent to his tax filing history and production of evidence in this matter. In his April 2023 security clearance application, Applicant disclosed that he failed to file his federal and state tax returns for tax years 2020 through 2022 and asserted that he was working to file the returns and pay the balance through payment plans. During his May 2023 interview, he clarified that only his 2020 and 2021 returns were outstanding and that he planned to contact a tax filing company the next month for help filing the returns. He asserted that he timely filed both his 2019 and 2022 returns.

The Government subsequently issued three sets of interrogatories seeking further information and documentation regarding Applicant's outstanding taxes, the responses to which reflected inconsistencies to his prior assertions and internally among the responses. In his August 2023 response to the first set, Applicant explained that he "recently filed [his] taxes for 2020" and anticipated the remaining two tax years to be filed by the end of August. FORM Item 3 at 3. The interrogatories instructed Applicant to produce copies of his federal and state tax account transcripts for tax years 2020 to 2022 and provided him with step-by-step instructions to obtain them. Applicant, however, submitted only copies of his Employer W2 Information for years 2019 through 2021 and his W-2 Wage and Tax Statement for 2022.

In his February 2024 response to the second interrogatories, Applicant asserted that his returns for the 2020 through 2022 tax years had since been filed. Once again, although instructed to produce his 2020 to 2022 federal and state tax account transcripts with accompanying step-by-step directions, Applicant submitted only duplicative copies of his Employer W2 Information for years 2020 and 2021.

Finally, in his May 2024 response to a third set of interrogatories, Applicant revealed that his federal and state tax returns were late filed as follows: tax years 2019 and 2020 in September 2023, tax year 2021 in February 2024, and tax year 2022 in April 2024. Additionally, his 2018 returns remained unfiled and his 2019 federal return carried an outstanding balance of about \$5,400. Despite that Applicant was again given instructions to produce his federal tax account transcripts for tax years 2019 through 2022, he produced only copies of his Employer W2 Information for years 2019 through 2022.

In his analysis, the Judge found that, "in three sets of interrogatories, [Applicant] was requested for his relevant IRS Tax Transcripts [and] given express instructions on how to obtain those Transcripts. Yet he did not provide those Transcripts." Decision at 5. Applicant challenges this finding and contends that he "sent the information requested for [his] tax transcripts for the years 2018-2022." Appeal Brief at 1. In support of this argument, he attached copies of the same Employer W2 Information images produced in response to interrogatories.

Applicant's contention that he submitted his tax account transcripts appears to be based on his persistent misunderstanding about the documentation being referenced. In sum, the documents to which Applicant refers on appeal as "tax transcripts" were included in the Government's FORM and considered by the Judge. *See* Decision at 2-3 (citing Item 3 at 8-11; Item 4 at 8-10; Item 5 at 12-14). Those documents are not, however, tax account transcripts, which are official summaries of tax filings that evidence the filing status and any outstanding balance for each tax year. Despite the Government's specific and repeated requests for Applicant to produce those transcripts through interrogatories, he did not. Nor did Applicant address that lack of evidence in response to the Government's argument that Applicant had failed to mitigate the SOR concerns because, "despite three separate requests with clear, unambiguous directions on how to do so, he has failed to provide any proof" to support his filing of the tax returns in question. FORM at 2. The Judge's finding that Applicant failed to provide his tax account transcripts is amply supported by the record, as is the resulting conclusion that none of the mitigating conditions applied.

The Judge also found that, despite Applicant's assertion that he makes payments on his federal tax debt every month, "[h]e did not . . . provide any documentation evidencing that payment arrangement with the IRS or that he is in compliance with it." Decision at 5. Applicant also challenges this finding. In support of his contention that he sent his IRS payment plan information, Applicant forwarded an email that appears to have been sent to a DOHA personnel security specialist on May 13, 2024, in conjunction with Applicant's third interrogatory response. The email attached a screenshot from the IRS website reflecting the existence of an Installment Agreement. Our review of the record confirms that the screenshot was not included in the Government's FORM.

In DOHA proceedings, it is the applicant's duty to present evidence sufficient to mitigate the concerns established by the Government, and the applicant bears the ultimate burden of persuasion for obtaining a favorable clearance decision. Directive ¶ E3.1.15. All applicants, including those that are *pro se*, are expected to take timely and reasonable steps to protect their rights under the Directive. *See* ISCR Case No. 00-0086 at 2 (App. Bd. Dec. 13, 2000).

When Applicant received the Government's FORM, he was advised that, if he did not file any objections or submit any additional information, his case would be assigned to a judge for a determination "*based solely upon the enclosed FORM.*" *See* FORM Transmittal Letter (emphasis added). The FORM both listed on the first page *and* attached the six documentary exhibits underlying the Government's argument against Applicant's national security eligibility. Despite the absence of the Installment Agreement screenshot from that listing and from the attached exhibits, Applicant failed to provide the document or any response at all to the FORM. If Applicant wanted the Judge to consider matters in his possession that were not contained in the FORM, it was his obligation to provide that information.

Finally, although the Board will sometimes remand a case for consideration of evidence that was submitted but not received, such an action is not warranted here. The screenshot reflects the existence of an Installment Agreement with \$185 monthly payments due on the 28<sup>th</sup> of each month. The screenshot does not reflect, however, when the agreement was established and if it is still active, the outstanding balance or tax years being addressed, if or for how long Applicant has complied with monthly payments, or if the agreement is even in Applicant's name. Even if the

Judge had received the screenshot, the scant information contained therein would not likely have resulted in a different outcome. *See* ISCR Case No. 00-0250 at 4 (App. Bd. Jul. 11, 2001) (discussing harmless error doctrine).

### **Conclusion**

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that the Judge examined the relevant evidence, weighed the disqualifying and mitigating evidence, and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "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. 24-00658 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