



**DEPARTMENT OF DEFENSE  
DEFENSE LEGAL SERVICES AGENCY  
DEFENSE OFFICE OF HEARINGS AND APPEALS  
APPEAL BOARD  
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Date: March 21, 2025

In the matter of:

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Applicant for Security Clearance

ISCR Case No. 23-02201

**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 January 22, 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 January 30, 2025, Defense Office of Hearings and Appeals Administrative Judge Benjamin R. Dorsey denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged three financial concerns related to Applicant's taxes: delinquent federal taxes in the approximate amount of \$17,100 for tax year (TY) 2012; delinquent federal taxes in the approximate amount of \$4,600 for TY 2014; and delinquent state taxes in the approximate amount of \$26,100 for TYs 2014 through 2018. 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**

Applicant is in his early forties. He has worked for the same government contractor since 2010 and has twice worked in a combat zone: from 2010 to 2011 and again from 2013 to 2014. His employer contracted with an established accounting firm (Firm A) to help Applicant and other employees with tax planning and filing. Based upon Firm A's advice, Applicant lowered his tax withholdings in anticipation of a foreign income exclusion. Because of a subsequent divorce and a lengthy child custody dispute, Applicant did not timely file his federal and state returns for several tax years and forfeited his employer's benefit of paying for Firm A to file his returns and the necessary documents to claim a foreign income exclusion.

In 2019, Applicant hired Firm B to file his late returns for TYs 2012 through 2018. Applicant asserts that Firm B was unfamiliar with the foreign income exclusion and did not claim the exclusion on Applicant's behalf, resulting in the alleged delinquent state and federal taxes. Later that same year, Applicant contacted his state tax authority, entered into a payment plan, made several monthly payments of \$450 per month, and later used his COVID-19 stimulus payment of \$1,200 to further reduce his state tax indebtedness. Applicant elected to address his state tax debt before his federal tax debt because his state had already garnished his bank account and because the accounting firm advised him that the state was more difficult to work with than the IRS. In 2020, Applicant's pay was reduced for reasons related to the COVID-19 pandemic. He could no longer afford the payments to his state tax authority and defaulted on the payment plan.

In early 2023, Applicant's earnings increased, allowing him to again tackle his tax indebtedness. In February 2023, Applicant hired Firm C to resolve his delinquent federal taxes. Firm C eventually helped Applicant reduce his federal tax obligation from about \$21,000 to about \$6,600, with a monthly payment plan of \$255. Applicant began making payments to the IRS in October 2024 and anticipates the total tax delinquency will be resolved by the end of 2025. This remaining federal tax arrearage from TY 2012 of about \$6,000 is Applicant's only current tax debt. In late 2024, Applicant sold his home and used the proceeds to pay the delinquent state taxes alleged at SOR ¶ 1.c.

Applicant filed his federal income tax returns for TYs 2020 through 2022 in about February 2024 and attributed his late filing to the COVID-19 pandemic. Applicant stated that he has received a refund of about \$1,000 to \$2,000 every tax year since 2014.

Applicant asserted that his financial situation has greatly improved. Other than his outstanding federal tax debt for TY 2012, he does not have any delinquent debts. Applicant took out a loan for about \$15,000 against his retirement savings account to pay the closing costs on the house and to satisfy a payday loan of about \$6,000. Since early 2023, Applicant has paid off several other payday loans and credit cards. He has about \$3,400 in his bank accounts. His balances on nondelinquent credit card accounts total about \$5,000, and he has about \$1,032 per month in surplus funds after he pays his expenses.

### **The Judge's Analysis**

The Judge acknowledged that Applicant provided some evidence that his tax delinquencies arose because of marital problems. Nevertheless, he concluded that Applicant failed to carry his burden of proof to mitigate, as he failed to demonstrate that he acted responsibly under the circumstances or that he acted in good faith:

[Applicant] did not file the income tax returns for the 2012 through 2018 TYs that resulted in his delinquent taxes until 2019. He did not attempt to make a payment arrangement on his federal tax debt until 2023. While he first attempted to make a payment arrangement on his state tax debt in 2019, he did so only after having his bank account garnished. After defaulting on his payment arrangement for his delinquent state taxes in 2020 (again for reasons that were arguably beyond his control), he did not attempt to address that debt again until early 2024.

Applicant ultimately resolved his State A tax debt by selling a house that he could have sold years earlier, except that he was delinquent on that mortgage. Although failing to file his income tax returns was a major factor in causing his delinquent taxes, he then did not timely file his federal tax returns for TYs 2020 through 2022. For these reasons, I do not find that he acted responsibly under the circumstances or in good faith. AG ¶¶ 20(b) and 20(d) do not apply. [Decision at 7.]

The Judge recognized the partial application of AG ¶ 20(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*, as Applicant has resolved his 2014 federal taxes, his 2014 through 2018 state taxes, and is current on an IRS payment arrangement for his 2012 federal taxes. The Judge concluded, however, that the application of AG ¶ 20(g) did not fully resolve the security concerns, in light of the timing of Applicant's resolution efforts and his additional failure to timely file his 2020 through 2022 federal income tax returns. In conducting his whole-person analysis, the Judge considered Applicant's military service and positive character references, as well as the "reasonable excuses for why it took him so long to address his tax delinquencies" before concluding that "those explanations do not adequately justify the length of the delay and leave me with doubts about his judgment and reliability." Decision at 8.

### **Discussion**

Applicant does not challenge any of the Judge's specific findings of fact. Rather, he 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. Throughout his brief, Applicant argues that the Judge did not give appropriate weight to the unusual circumstances that contributed to the tax delinquencies: the marital trouble, the divorce proceedings, the contentious child custody dispute, and COVID-19. Moreover, Applicant argues, the Judge failed to properly consider the progress that Applicant has made in resolving the delinquencies: his complete satisfaction of the state tax debt and the federal 2014 delinquency and his compliance with a payment plan for the remaining federal 2012 delinquency. Appeal Brief at 5,6. None of Applicant's 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). The Judge explicitly discussed each of the factors that Applicant raises, and he acknowledged that the tax delinquencies arose in part due to circumstances beyond Applicant's control. In concluding that no mitigating condition fully applied, the Judge articulated the specific factors that led him to find that Applicant did not act responsibly under the circumstances or in good faith (*e.g.*, delaying the filing of federal and state tax returns until 2019 and entering into a payment arrangement with state tax authorities only after garnishment of his bank account).

In asserting that the mitigation analysis is flawed and that decision is arbitrary and capricious, Applicant repeatedly argues for the Judge to weigh the evidence differently. 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. 23-02201 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