



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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 ARLINGTON, VIRGINIA 22203
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Date: March 27, 2025

In the matter of:)	
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-----)	ISCR Case No. 23-02036
)	
Applicant for Security Clearance)	
)	

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 February 29, 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 30, 2025, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Discussion

Under Guideline F, the SOR alleged that Applicant failed to timely file federal and state tax returns for tax years 2014, 2017, 2018, 2020, 2021, and 2022, and that he carried delinquent tax balances for various tax years, including approximately \$22,000 previously owed to his state government and approximately \$76,000 still outstanding to the federal government. In response to the SOR, Applicant admitted all allegations, explaining that the tax returns had been filed, that the

state tax debt had been paid, and that he was working to establish a payment plan to resolve the outstanding federal tax debt. Applicant requested that his case be decided based on the written record and received a complete copy of the Government’s File of Relevant Material (FORM) on October 22, 2024, through which he was notified of his ability to respond with objections or additional information for the Judge to consider. As discussed further, below, Applicant submitted three responses to the FORM between November 21 and December 30, 2024, each time with supporting documentation.

The Judge found favorably regarding Applicant’s formerly delinquent state tax balance for 2020 through 2022 and adversely on the remaining four allegations. Ultimately concluding that it is not clearly consistent with the national interest to grant Applicant national security eligibility, the Judge noted that “Applicant’s late tax filings and expressed commitments to take care of his remaining tax debt delinquency issues in the future, while encouraging, lack the needed documentation to corroborate his assurances and atone for his past tax-filing and payment lapses.” Decision at 6.

On appeal, Applicant reiterates his explanation for the tax delinquencies, provides updates regarding his financial status, and requests reconsideration of his case. Applicant also provides new documentation reflecting his federal tax payment history and current balance. The Appeal Board does not review cases *de novo*, and we are generally prohibited from considering new evidence. Directive ¶ E3.1.29. We may, however, consider new evidence insofar as it bears upon threshold issues of due process or jurisdiction. *See* ISCR Case No. 08-07664 at 2-3 (App. Bd. Dec. 29, 2009). Applicant’s appeal brief does not specifically raise a due process issue; however, his new documentation highlights the possibility that evidence was properly submitted but not considered by the Judge, which is confirmed following our review of the entire record.

Evidence Not Considered

After receiving the Government’s FORM on October 22, 2024, Applicant submitted the following three responses, on November 21, December 17, and December 30, 2024. The Judge appears to have considered only the December 17 submission in analyzing the matter, and the November 21 and December 30 submissions were inadvertently excluded from the hard copy record.

On November 21, 2024, Applicant initially responded to the FORM with further explanation for his tax deficiencies, a character reference letter, and a receipt reflecting two payments made towards his federal tax balance on November 21, 2024, including approximately \$11,900 for tax year 2017 and \$8,100 for tax year 2020. *See* FORM Response at 4. The Government did not object to this four-page submission, and it was forwarded to the Hearing Office along with the FORM. Although this initial FORM response is included in the electronic record, it is not in the hard copy record and appears to have been omitted from the Judge’s review.¹

¹ In discussing the evidence, the Judge noted that Applicant “responded to the FORM (**albeit beyond the 30 days allowed**) with receipts of payments to the Internal Revenue Service.” Decision at 2 (emphasis added). This further supports that the initial FORM response was omitted from the record and consideration, as it was timely submitted.

On December 17, 2024, Applicant supplemented his FORM response with an update regarding his federal tax balance and documentation reflecting a payment made for \$3,366.71 for tax year 2020. *See* Item 7 at 3. This first supplemental response was identified by the Judge as Item 7 and included in the record.

On December 30, 2024, Applicant again supplemented his FORM response with documentation reflecting a \$9,000 federal tax payment made for tax year 2021, as well as federal and state tax payments made for tax year 2023. Although this second supplemental FORM response is included in the electronic record along with the email transmitting it to the Hearing Office on December 30, the two-page submission is not in the hard copy record and appears to have been omitted from the Judge’s review.

In calculating Applicant’s current tax balance, the Judge found that “Applicant is indebted to the Federal Government for delinquent taxes in excess of \$74,000” and that, aside from Applicant’s “payments to the IRS totaling \$6,733 (Item 7)[,] he provided no evidence of additional tax payments or installment payment plans with the IRS,” which the Judge concluded remained “in excess of \$68,000.” Decision at 3. The foregoing accounting fails to consider approximately \$29,000 in federal tax payments that were evidenced in Applicant’s November 21 and December 30 FORM responses, which omission may have impacted the outcome of the case and therefore constitutes harmful error.²

Inconsistent Formal Findings

Because the case is being remanded to address the foregoing evidentiary error, it bears noting an inconsistency in the Judge’s Formal Findings that is not explained in the decision’s preceding analysis. The SOR alleged that Applicant previously owed a delinquent state tax balance of approximately \$7,500 for tax years 2014 and 2016 through 2019, which remained unpaid until about 2023 (SOR ¶ 1.d). The SOR also alleged that Applicant previously owed a delinquent state tax balance of approximately \$14,600 for tax years 2020 through 2022, which remained unpaid until 2024 (SOR ¶ 1.e). Without any explanation why, the Judge found favorably on the second allegation but adversely on the first.

A decision must set forth findings and conclusions with “sufficient specificity and clarity that the parties and the Board can discern what the judge is finding and concluding.” ISCR Case No. 98-0809 at 2 (App. Bd. Aug. 19, 1999). Here, however, with no clarifying explanation, we cannot determine if the difference in formal findings follows a reasonable analysis, reflects a typographical error, or constitutes arbitrary and capricious reasoning. In any event, it should be remedied on remand.

² *See N.L.R.B v. Am. Geri-Care*, 697 F.2d 56, 64 (2d Cir. 1982) (remand required where there is a significant chance that, but for the error, a different result might have been reached), *cert. denied*, 461 U.S. 906 (1983).

The Judge’s reference to “payments to the IRS totaling \$6,733” appears to be a double counting of the \$3,366.71 payment evidenced in Applicant’s November 21 response (Item 7), which inured to Applicant’s benefit; however, that benefit is insufficient to offset the potential impact of the omitted \$29,000 in federal tax payments.

Conclusion

We conclude that the best resolution of this case is to remand it to the Judge to reopen the record to address the errors identified herein, including considering Applicant's November 21 and December 30 FORM responses, and to issue a new decision. Directive ¶ E3.1.35. The Board retains no jurisdiction over a remanded decision; however, the Judge's decision issued after remand may be appealed. Directive ¶¶ E3.1.28 and E3.1.30.

Order

The decision in ISCR Case No. 23-02036 is **REMANDED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board