



Date: April 1, 2025

In the matter of:

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# Applicant for Security Clearance

ISCR Case No. 24-00330

## APPEAL BOARD DECISION

## APPEARANCES

**FOR GOVERNMENT**

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

**FOR APPLICANT**

S. Marshall Griffin, Esq.

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 Roger C. Wesley denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

## Background

During his January 2023 interview, Applicant disclosed that he had not filed federal or state income tax returns for at least tax years 2012 through 2014 and acknowledged there may have been additional years unfiled. He was confident that he owed no balance to either taxing authority.

In his July 2023 response to a first set of interrogatories, Applicant explained that he had not filed his returns because he “always got a refund” and “blew it off.” File of Relevant Material (FORM) Item 5 at 2. He claimed to have begun working with a tax professional to file eight years of returns, which were “all almost ready to file.” *Id.* Applicant also submitted documentation reflecting that his 2021 and 2022 federal tax returns were filed and that he had prepared, but not yet filed, his 2018 federal and state returns.

On May 10, 2024, in response to a second set of interrogatories, Applicant further disclosed that his federal and state tax returns for tax years 2012 through 2020 were unfiled, but that he was working with a tax preparer and anticipated the returns would be filed within several days. FORM Item 4 at 2-4. He submitted new documentation that his 2023 federal return had also been filed.

Based on the foregoing information, the SOR alleged under Guideline F that Applicant failed to file federal and state income tax returns for tax years 2012 through 2020. Applicant responded to the SOR on June 10, 2024, admitting both allegations and asserting that he had since filed his federal returns for 2013 through 2020, for which he would have been due a refund, and had filed his 2020 state return. He submitted no documentation in support of these assertions.

Having requested that his case be decided based on the written record, Applicant received a complete copy of the Government’s FORM on August 14, 2024, through which he was notified of his ability to respond with objections or additional information for the Judge to consider. Applicant did not respond to the FORM and the Judge found against him on both allegations.

### **Discussion**

On appeal, Applicant’s Counsel contends that the Judge failed to properly apply the Whole-Person Concept and Guideline F mitigating conditions, which he argues amount to an abuse of discretion. Counsel’s challenges are unpersuasive.

#### New Evidence

While acknowledging that the Board generally cannot consider new evidence, Counsel correctly notes that we may 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). He fails, however, to identify any discernable due process or jurisdictional claim of error. We therefore remain precluded from considering Applicant’s new evidence on appeal. Directive ¶ E3.1.29.

#### Application of Mitigating Conditions

Noting that Applicant’s “admitted tax-filing failures are fully documented and create judgment issues over the management of his finances,” the Judge reasonably found that the conduct raised disqualifying condition AG ¶ 19(f), which considers the “failure to file . . . annual Federal, state, or local income tax returns.” Counsel argues that the Judge thereafter erred in failing to apply mitigating conditions AG ¶¶ 20(a) and 20(g). We disagree.

Judges must apply pertinent Adjudicative Guidelines disqualifying and mitigating conditions. *See* ISCR Case No. 02-05110 at 3 (App. Bd. Mar. 22, 2004) (citing Directive ¶¶ 6.3, E3.1.25). Turning first to AG ¶ 20(a), the condition affords mitigation when the alleged behavior happened so long ago, was so infrequent, or occurred under circumstances making it unlikely to recur. Here, Applicant failed to file his federal and state tax returns for nine years and, without any independent documentation in the record to support resolution of those returns, that failure is ongoing. Counsel’s argument that AG ¶ 20(a) should have been considered is without merit.

With respect to AG ¶ 20(g), which affords mitigation when the individual has arranged with the appropriate tax authority to file the outstanding returns, we agree that the condition was relevant to the concerns raised in the SOR and that it was not explicitly identified in the decision as potentially applicable. If a provision of the Guidelines appears to apply to the facts of a particular case, then the judge is obligated to either apply that provision or give a rational explanation for not doing so. *See* ISCR Case No. 97-0825 at 2 (App. Bd. Jan. 7, 1999). Under the facts of this case, an expectation that the Judge explicitly reference AG ¶ 20(g) places form over function because the Judge provided a rational explanation for declining its application when he specifically noted the absence of “any documented evidence of Applicant’s timely resolving his federal and state tax-filing failures” to conclude that “none of the potentially available mitigating conditions are available to him.” Decision at 5.

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). Throughout his adjudication process, Applicant was afforded multiple opportunities to submit documentation corroborating his resolution efforts, including in response to two sets of interrogatories and the SOR. In its FORM, the Government highlighted the lack of mitigating documentation in the record, noting that, “[c]rucially, Applicant has failed to provide any documentation to support his claims regarding his 2013-2020 Federal filings, and his 2020 state filing. Accordingly, there is minimal actual evidence of compliance.” FORM at 3. When he received the FORM, Applicant 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.*” FORM Transmittal Letter (emphasis added). If he had evidence in support of his tax resolution efforts for the Judge to consider, it was his obligation to provide that information in response to the FORM. For whatever reason, he failed to do so. And, without such supporting documentation, the Judge acted well within his discretion in concluding that Applicant’s uncorroborated assertions were insufficient to mitigate the Government’s Guideline F concerns.

### Whole-Person Concept

Regarding his analysis under the Whole-Person Concept, the Judge identified the AG ¶ 2(d)<sup>1</sup> factors and later found that, “[w]hile Applicant is entitled to credit for his work in the defense

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<sup>1</sup> AG ¶ 2(d): In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the

industry, his efforts are not enough at this time to overcome his repeated failures or inability to timely file his federal and state income tax returns.” Decision at 6. Counsel contends that the Judge failed to address the AG ¶ 2(d) factors in a “meaningful” or “comprehensive” way and that, absent such error, the Judge “would have noted many factors applied to [Applicant].” Appeal Brief at 3.

The Whole-Person Concept requires a judge to analyze an applicant’s circumstances based on consideration of the full record; however, a judge is not required to discuss each of the Whole-Person factors and a decision does not turn simply on finding that one or more of them apply to the facts of a particular case. *See* ISCR Case No. 11-08546 at 4 (App. Bd. Feb. 27, 2013). Counsel’s contention regarding the sufficiency of the Judge’s Whole-Person analysis both implicitly and explicitly advocates for a different weighing of the evidence, which is insufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 04-08975 at 1 (App. Bd. Aug. 4, 2006) (citation omitted). For example, Counsel suggests that AG ¶¶ 2(d)(1) and 2(d)(2) afford mitigation because Applicant’s failure to timely file taxes “was not done maliciously or in an attempt to evade paying taxes” and a judge “*could* conclude that [Applicant] learned from his mistakes once he was financially stable [and] mature.” Appeal Brief at 3, 4 (emphasis added). Such arguments ignore the Board’s clear and longstanding precedents regarding the implications of tax obligation compliance on national security eligibility.

It is well-settled that an individual who is unwilling to fulfill his legal obligations – such as timely filing income tax returns – does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. *See* ISCR Case No. 98-0810 at 3 (App. Bd. Jun. 8, 2000) (“It is untenable for an applicant to refuse to accept his or her legal obligation to comply with the federal tax laws and then insist that the federal government must grant him or her the privilege of handling classified information.”). Contrary to Counsel’s argument about Applicant’s intent, disqualification under Guideline F is not limited to tax filing failures done with nefarious intent or to avoid paying the resulting tax obligation. Rather, the Directive cites failure to file tax returns as a disqualifying condition in and of itself, irrespective of whether the underlying taxes have been paid, such as through withholding. Indeed, an applicant’s legal obligation to timely file income tax returns is independent from whether he owes additional taxes. *See* ISCR Case No. 94-0964, 1996 WL 648762 at \*5 (App. Bd. Jul. 3, 1996).

Counsel’s argument that Applicant has learned from his mistakes is also unpersuasive and he points to nothing in the record to suggest that the Judge not agreeing was arbitrary or capricious. To the contrary, and as reflected in the Judge’s findings and repeatedly echoed herein, “Applicant provided no documentation of steps he has taken to file his tax returns for the years in issue.” Decision at 2. The record below does not evidence Applicant having learned from and corrected his mistakes, and the Judge’s conclusion that the Whole-Person analysis did not overcome the security concern was reasonable and complies with the requirements of the Directive.

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time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### Hearing Office Cases

Counsel relies on hearing-level decisions in unrelated Guideline F cases to suggest how the Judge in this case could have differently applied the Whole-Person Concept and mitigating factors. For multiple reasons, this reliance is misplaced. Each case must be decided on its own merits. AG ¶ 2(b). How particular fact scenarios were decided at the hearing level in other cases is generally not a relevant consideration in the Board's review of a case. The decisions that Counsel cites have no direct relationship or unique link to Applicant's case to make them relevant here. Moreover, while each of the cited cases involves the failure to file tax returns, the facts and concerns at issue are distinguishable from the instant case, perhaps most glaringly in that the applicants in each cited case provided documentation that the previously delinquent tax returns had been filed.

### **Conclusion**

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. In the instant case, 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. 24-00330 is **AFFIRMED**.

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