

Background

Applicant is in his late 30s and has been employed by a federal contractor since July 2021. He has held a security clearance since 2010 in connection with his work for his current and past employers.

Under Guideline F, the SOR alleged that Applicant had failed to timely file federal income tax returns for tax years 2018, 2020, 2021, and 2022, and that he owed the Federal Government about \$1,900 for tax year 2021. The SOR also alleged that Applicant had failed to timely file his state income returns for tax years 2018, 2020, and 2022, and that he owed his state taxation authority about \$19,000 for tax years 2014 through 2018. In his Answer, Applicant admitted the allegations but claimed that he had filed all delinquent tax returns and made a payment plan with his state taxation authority. The Judge found that Applicant mitigated the allegations related to the state tax debt and delinquent filings, but that he did not mitigate the concerns alleged with respect to Applicant's federal debt and untimely filings.

In September 2022, DoD sent interrogatories to Applicant which asked him in part about his federal and state income taxes. In response, Applicant stated, "I was not in understanding of taxes. I have recently filed all of my back taxes. Currently awaiting my payment plan amount." Government Exhibit 3 at 8. About a year-and-a-half later, DoD sent Applicant additional interrogatories asking about the status of his federal and state income tax filings and obligations. In his February 2024 response, Applicant reported filing federal income tax returns for tax years 2018 through 2021, said he filed for an extension for his 2022 federal tax return, and said he would file it with his 2023 income tax returns.

The Judge found that Applicant filed his federal and state income tax returns for 2018 in spring 2024. Applicant filed his state income tax return for tax year 2020 in June 2025 after the hearing but did not document that he filed his federal income tax return for 2020 despite claiming they had been filed during his testimony. Tr. at 36. His 2021 federal and state income tax returns were filed in fall 2022, after receiving an extension. His federal and state income tax returns for tax year 2022 were filed in early 2025. Decision at 3-4.

Applicant also had related tax delinquencies exceeding \$35,000 in federal obligations and over \$19,000 in state obligations.¹ Applicant set up payment plans with both the federal and state taxation authorities. The Judge credited Applicant with a decrease in his state tax debt from \$19,139 to \$16,082 as of April 15, 2025, due to payments made under the plan. In July 2024, Applicant entered into a payment agreement for overdue federal taxes for tax years 2015, 2018, and 2021. At that time, the balance due was \$11,761 and Applicant agreed to monthly payments of \$250 to be made through June 2029. The record does not reflect any payments made under that agreement. In April 2025, he entered into a new payment agreement for overdue taxes for tax years 2018, 2022, and 2023. He authorized a private collection agency to debit his bank account for payments totaling \$35,400 to be made between April 2025 until January 2035. As of May 20, 2025, he owed at least

¹ Applicant's failure to pay the additional unalleged income taxes when due were not considered for disqualifying purposes but were appropriately considered in evaluating Applicant's credibility and mitigating conduct.

\$35,429 for overdue taxes for 2018, 2022, and 2023. He submitted no evidence of payments made under the April 2025 payment agreement.

Discussion

On appeal, Applicant challenges the Judge’s application of the mitigating conditions and the Whole-Person Concept. In deciding whether the Judge’s rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

Applicant’s appeal suggests that the Judge made a factual error in his conclusion that Applicant “failed to file a [tax year] 2020 return.” Decision at 7; *see also id.* at 3. However, this allegation of error is without merit. While Applicant testified that all of his past-due federal and state tax returns had been filed, his post-hearing exhibit, with a print date of May 20, 2025, reflected “no [federal] tax return filed” for tax year 2020. Applicant Exhibit G. The Judge’s factual findings and conclusions are amply supported by the record, and the Judge did not make a factual error with respect to the 2020 federal income tax filing status.

Turning to Applicant’s arguments about mitigation, Applicant asserts that he mitigated the Government’s concerns by filing his delinquent federal and state tax returns and arranging payments on his delinquent taxes prior to the hearing. Accordingly, he submits that the Judge erred in his findings that AG ¶¶ 20(b),² 20(d),³ and 20(g)⁴ did not provide full mitigation. First, as noted above, Applicant’s claim that he filed his 2020 federal income tax return is unsupported. Additionally, we note the Judge found the two allegations with respect to the unfiled state tax returns and state delinquencies in Applicant’s favor after applying AG ¶¶ 20(d) and 20(g).

In his discussion of AG ¶ 20(b), the Judge found that Applicant faced some circumstances beyond his control, but that Applicant did not act responsibly under the circumstances.⁵ We interpret Applicant’s appeal to suggest that “hiring a tax preparer and actively managing his finances” shows responsible action under the circumstances. Appeal Brief at 4. However, considering Applicant’s broken promises to resolve his delinquent federal income tax filings, his

² AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly reasonably under the circumstances.

³ AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁴ 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.

⁵ The Judge credited Applicant with periods of unemployment and underemployment and his partner’s decision to make a downpayment on a luxury sedan for Applicant as circumstances that were largely beyond his control. The Judge also noted that “his decision to co-sign the vehicle loan was not.” Decision at 7.

delay in paying his delinquent state tax obligations, and his lack of documented payments on his federal tax repayment agreements, it was reasonable for the Judge to conclude that Applicant did not act responsibly under the circumstances.

The Judge found that AG ¶¶ 20(d) and 20(g) did not provide full mitigation with respect to Applicant's alleged federal tax debt because

he submitted no evidence of payments made under either agreement . . . [and e]ven if he had made payments in accordance with the April 2025 agreement (\$150 per month)[,] his repeated failure to pay taxes when due and the timing of his payment arrangements with the IRS are insufficient to support full mitigative credit for compliance with his recent arrangement with the IRS or to support a finding that he is adhering to a good-faith effort to repay his overdue federal income taxes.

Decision at 8. The Board has indicated that the concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201 at 3 (App. Bd. Oct. 12, 1999). The evidence supports the Judge's findings that Applicant is not adhering to any reasonable, good faith effort to resolve his federal tax debt, as he has not demonstrated compliance with his recent federal repayment plans. Additionally, the Judge noted that AG ¶ 20(g) was “not established for the unfiled [tax year] 2020 federal income tax return.” Decision at 8. His conclusions that Applicant failed to mitigate the concerns with respect to the federal tax delinquency and unfiled 2020 federal tax return are well supported by the evidence.

A security clearance adjudication is not a proceeding aimed at inducing an applicant to meet his or her duty to file tax returns and pay taxes. “Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness.” ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). Timing of any corrective action is both relevant and material to that determination. While Applicant points out that “the bulk of [Applicant's] remediation occurred well before the hearing” (Appeal Brief at 5), we note that it also occurred after Applicant received two sets of interrogatories and the SOR. Even though Applicant eventually filed “the bulk” of his federal and state tax income tax returns (excluding his 2020 federal income tax return), made payments on his state tax delinquencies, and made payment arrangements on his \$35,000 federal tax delinquency, the Judge was obligated to consider all of the facts and circumstances surrounding Applicant's failure to timely file and pay his tax obligations. He did so and conducted a comprehensive analysis under both the mitigating conditions and the Whole-Person Concept.

Overall, Applicant's brief advocates for an alternative weighing of the evidence. An 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 (App. Bd. Oct. 12, 2007). Moreover, there is a rebuttable presumption that the Judge considered all of the record evidence unless the Judge specifically states otherwise, and

a bare assertion that the Judge did not consider evidence is not sufficient to rebut that presumption. *E.g.*, ISCR Case No. 19-03344 at 3 (App. Bd. Dec. 21, 2020).

Applicant has failed to establish any harmful error below. The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision 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. 23-01472 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