

**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759**

three debts on the basis that they were paid in full. Noting that Applicant sufficiently established that he had resolved or was working to resolve his delinquent consumer debt, the Judge found favorably on those five allegations. He resolved the tax allegations adversely, however, acknowledging Applicant's claim that "he filed all required tax returns," but finding that Applicant failed to corroborate his claims, despite being "given time after his hearing to provide [Internal Revenue Service] tax transcripts or copies of his tax returns or other evidence to show that he had filed all tax returns." Decision at 10.

On appeal, Applicant argues that "significant errors in the Judge's findings, including a factual error regarding state income tax obligations . . . , failure to consider evidence that [he] filed all federal tax returns in 2023, failure to consider stolen identity, misapplication of adjudicative guidelines, and incorrect assessment of intent . . . materially affected the outcome of the case." Appeal Brief at 1.

Applicant first challenges the Judge's adverse finding regarding his state tax returns on the basis that he resides in a state that "does not impose a state income tax on individuals" and therefore had no filing obligation. Appeal Brief at 1. In reply, the Government acknowledges that, although Applicant previously and repeatedly admitted the allegation and his belief that he was required to file state income tax returns, Applicant's argument raised for the first time on appeal has merit and the SOR erroneously alleged the state-level filing failure. The Government goes on to argue that, because "the Judge properly found unmitigated Applicant's delinquent Federal tax returns," the state tax return "error was harmless and does not warrant reversing the Judge's unfavorable Decision." Reply Brief at 3. We agree.

Regarding the federal taxes, Applicant argues that the Judge failed to properly consider the circumstances leading to his tax filing delinquencies, including that he was the victim of identity theft in about 2018 and fraudulent tax returns were filed in his name, which he asserts complicated his "ability to file legitimate returns." Appeal Brief at 2. He also argues that the Judge erred by failing to consider evidence showing that Applicant filed the returns, including copies of the filings themselves. Neither argument is persuasive. Contrary to Applicant's first argument, the Judge detailed Applicant's explanation of "identify theft" for his filing failures throughout the Decision's factual findings, but ultimately concluded that Applicant failed to sufficiently demonstrate that he had resolved the issue with supporting documentation.

Turning then to the evidentiary component of Applicant's argument and despite his contention that he submitted copies of his filed federal tax returns or any other evidence demonstrating that the returns have been filed, the record is devoid of any such documentation. Rather, the record reflects that Applicant was given multiple opportunities to provide documentation corroborating his explanation for failing to timely file his federal tax returns and their subsequent filing. He responded to Government interrogatories on January 25, 2024, asserting that he filed his 2018 to 2022 federal returns that same day. Government Exhibit 4 at 13.¹ Despite being instructed to provide his IRS Tax Account Statements for those tax years, Applicant instead provided IRS Wage and Income Statements. *Id.* at 13, 17-39. Unlike the requested Tax Account Statements, which offer a comprehensive overview of a taxpayer's tax activity for a specific tax

¹ Notably, in his subsequent SOR response, Applicant asserted that he filed the federal returns two months after his interrogatory response, in March 2024.

year, Wage and Income Statements reflect only data reported to the IRS by third parties via information returns (*i.e.*, Forms W-2, 1099, 1098, or 5498.).

The Government noted this evidentiary hole at hearing when it indicated that there was no evidence, including via the Wage and Income Statements, that Applicant's federal returns had been filed. Tr. at 15, 33-34. At the end of the hearing, the Judge emphasized the importance of Applicant submitting additional documentation to support the purported federal filings and any resulting balance owed, and he offered to leave the record open for two months to accommodate Applicant's submission. Applicant believed one month was sufficient and expected to produce evidence of the identity theft police report and his IRS tax transcripts for the preceding five years. *Id.* at 52-55. Despite that month and the Judge's proactive offer to extend the submission window, if necessary, for Applicant to produce the documentation, the Judge "did not receive any requests for additional time or post-hearing documents from Applicant." Decision at 2. As a result, the Judge found that he could not "credit [Applicant] with filing those five years of tax returns without receipt of readily available corroboration to prove those tax returns were actually filed," and concluded that Applicant's "failure to prove that he took timely, prudent, responsible, and good-faith actions regarding his taxes raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information." Decision at 8, 11.

Once the Government met its burden of demonstrating a *prima facie* case regarding Applicant's tax filing failures, the burden shifted to Applicant to present evidence to rebut, extenuate, or mitigate the evidence against him. Despite multiple opportunities to do so before and after the hearing, Applicant produced no such documentary evidence. Accordingly, it was not arbitrary, capricious, or contrary to law for the Judge to decline to accept Applicant's unsupported claims that he had resolved his federal tax filings.

Conclusion

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. Rather, the Judge examined and 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. 23-02412 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board