



Applicant raised the following issues on appeal: (1) whether the Judge decided the case on the full record, and (2) whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

Applicant is a 46-year-old employee of a defense contractor. He served in the Army from 1990 to 2001 and in the National Guard from 2001 to 2012. He received an honorable discharge and is eligible to receive military retirement benefits when he reaches age 60. He has been married and divorced twice. He has an adult son.

Applicant admitted all of the SOR allegations. He did not timely file his Federal income tax returns for 2005 through 2009 because he and his wife had a dispute over who should claim the deduction for their son. He was also depressed about his divorce and his loss of friends while serving in Iraq. The Internal Revenue Service (IRS) filed tax returns for him. The IRS garnished about \$225 from his wages every two weeks for about 30 months. In about 2010, the garnishment stopped after he filed a tax return.

Applicant's Federal income tax returns were filed as follows: 2004 in October 2006; 2005 unknown; 2006, 2007, 2008, and 2009 by the IRS in April 2013; 2010 on time; 2012 on time; 2013 in November 2015; 2014 in May 2015; and 2015 was undated.<sup>1</sup> Income taxes that Applicant owed for 2004 were paid in March 2011 and those owed for 2006 were paid in February 2016. As of March 2016, he owed the IRS about \$2,300 for 2007; about \$4,900 for 2008; and about \$6,200 for 2009. Applicant estimated that he owed the IRS about \$6,000, but the Judge found he actually owed about \$11,000 after receiving credit for his 2015 tax refund withholding. To resolve his past-due Federal taxes, he is making monthly payments to the IRS of \$125, which are scheduled to increase to \$225 in October 2016.

Applicant believes that his state income tax returns for 2005 through 2009 were filed and that he did not owe any past-due state income taxes. The Judge asked Applicant to provide evidence that his state taxes were filed and paid. Applicant provided a letter from the state tax authority indicating no taxes were due for 2012. He did not provide documentation addressing his state taxes for 2005 through 2009.

Twenty-two delinquent debts totaling about \$7,000 were also alleged in the SOR. Applicant paid 11 of those debts, had a payment plan for one, and disputed three of them. Although seven debts remained unresolved, the Judge found in favor of Applicant on the 22 debts. The Judge also noted that Applicant conceded he was financially irresponsible, was reluctant to address the debts, and became motivated to investigate and resolve them after receipt of the SOR.

Applicant provided character statements from friends, colleagues, and supervisors that laud his performance of duty, leadership, trustworthiness, integrity, and contributions to the national

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<sup>1</sup> The filing of Applicant's 2011 Federal income tax return was not addressed in the Judge's decision.

defense. Applicant's military medals and ribbons were listed in the decision.

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

The Judge found that Applicant's failure to file his 2005 through 2009 Federal and state income tax returns in a timely manner and his delinquent debts established disqualifying conditions.<sup>2</sup> He concluded that Applicant's efforts to resolve the delinquent debts were sufficient to mitigate the security concerns arising from those debts. However, he noted Applicant did not provide documentation showing his state income tax returns were filed and state taxes paid. He concluded that Applicant's history of failing to file timely and pay his Federal and state income taxes raised unresolved security concerns.

### **Discussion**

Applicant contends that the Judge did not consider all of the evidence, including his favorable evidence. However, the Judge made findings about much of the evidence that he cites. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016).

Applicant argues the Judge failed to contact any of the individuals who submitted character reference letters to clarify his integrity and devotion to duty. This argument lacks merit. When an applicant admits the allegations against him and/or the Government presents evidence of security concern, the burden shifts to the applicant to present evidence in mitigation and extenuation. Directive ¶ E3.1.15. The Directive does not authorize a Judge to act as an investigator for either party in a security clearance proceeding. *See, e.g.*, ISCR Case No. 11-06659 at 5 (App. Bd. Oct. 22, 2012). Additionally, Applicant requests the Appeal Board contact his character references. The Appeal Board, however, may not contact individuals to obtain additional evidence because we are expressly prohibited from considering new evidence. Directive ¶ E.3.1.29.

Applicant further argues that the Judge should have found his security concerns mitigated. His arguments in essence amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06634 at 2 (App. Bd. Apr. 28, 2016). Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. *See, e.g.*, ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Evidence that Applicant has had tax filing delinquencies for many years supports the Judge's ultimate conclusion.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may

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<sup>2</sup> Directive, Enclosure 2 ¶¶ 19(a): "inability or unwillingness to satisfy debts;" 19(c): "a history of not meeting financial obligations;" and 19(g): "failure to file annual Federal, state, and local income tax returns as required . . . ."

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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### **Order**

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board