

pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her findings of fact and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has worked overseas in combat zones for the past four years. In 2012, he retired from the military after 24 years of service. He is married and has two adult children and two adult stepchildren.

The SOR alleged that Applicant owed the Federal Government about \$19,000 in taxes for 2007, 2010, 2011, and 2012. He documented the IRS has placed his Federal tax liability in abeyance due to his service in a combat zone. The tax code gives people serving in support of the military in a combat zone up to 180 days after returning to the United States to file and make payments on delinquent Federal taxes. Because he still works in a combat zone, the payment of his prior-year Federal taxes remains deferred.

The SOR alleged that Applicant owed state taxing authorities about \$13,700 for 2010, 2011, and 2012. He testified that debt was paid through an installment agreement, but did not provide documentary proof of the agreement or payments. He presented a cashiers check payable to the state taxing authority for about \$7,700 and claimed this represented the balance due for the tax years in question. He indicated he would provide additional evidence showing this debt was resolved, but failed to do so. Unlike the Federal Government, the state does not allow Applicant to place his state taxes in abeyance.¹

Applicant's wife managed their finances from 2007 to 2014. She felt overwhelmed managing the household while he was deployed. They could not afford their Federal income tax payments while paying for two children in college. In 2014, he and his wife hired an accountant to file their taxes and provide tax advice.

In 1998, Applicant was denied a security clearance due to financial issues. He attributed this to his ex-wife's overspending while he was deployed. Records show the denial was also due to overpayments of housing allowances for which he was counseled. In 2001, he was granted a security clearance. His professional colleagues and friends speak highly of him.

The Judge's Analysis

Applicant exercised poor judgment in prioritizing other expenses over his tax obligations.

¹ The SOR also alleged that Applicant had two other debts that the Judge found in his favor and are not an issue on appeal.

He placed his Federal taxes in abeyance while he is serving in a combat zone, but the abeyance does not apply to his state taxes. He failed to document that his state tax debt is resolved. He presented proof of making one payment of \$7,700, but about \$6,000 appears to remain unpaid. His state tax delinquency is not attributable to circumstances beyond his control, and he has not demonstrated responsible action.

Discussion

Applicant contends that the Judge erred in finding the state does not allow him to place his state taxes in abeyance. In support of this contention, Applicant cites to Appellant's Exhibit (AE) L, *i.e.*, Internal Revenue Service (IRS) Publication 3, *Armed Forces' Tax Guide, For use in preparing 2015 Returns*. We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. We do not find Applicant's contention persuasive. A reading of IRS Publication 3 reflects that it is directed at the deadlines for filing tax returns with, or making tax payments to, the IRS (*i.e.*, the Federal Government) and does not address the granting of extensions for state tax requirements. Applicant has failed to produce any documentation to show that he is entitled to a deferment of his state tax obligation. To the contrary, Applicant testified that the combat zone "abeyance" applied to his Federal taxes, but not to his state taxes.² From our reading of the record, the Judge's material findings of a security concern are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant argues that the Judge did not consider or properly weigh all relevant evidence. He cites to such things as his character evidence, military service, and the actions he has taken to resolve his financial problems. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough 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. 14-03747 at 3 (App. Bd. Nov. 13, 2015). We give due consideration to the Hearing Office case that Applicant cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* Additionally, the Judge complied with the requirements of the Directive in her whole-person analysis by considering the totality of the evidence in reaching her decision.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the

² At page 43 of the transcript, Applicant testified as follows:

[Applicant's Counsel]: You mention this before, putting taxes in abeyance. What does that mean?

Applicant: Not that –

[Applicant's Counsel]: And I'm sorry, and is this applicable to state and federal or just federal?

Applicant: Just federal.

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). *See also* Directive, Encl. 2, App A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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