



arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

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

Applicant, who is 42 years old, served in the military from 2002 to 2009 and has worked for Federal contractors since 2009. He is divorced and has a 16-year-old child. The SOR alleges that he did not timely file his 2010-2012 Federal income tax returns until November 2015, and he had not yet filed his 2009-2014 state income tax returns. In responding to interrogatories in November 2015, he provided copies of his Federal income tax returns for the years in question and maintained he filed his 2009, 2013, and 2014 state income tax returns. In responding to the SOR in March 2016, he provided copies of his 2009-2014 state income tax returns, all of which had a state file-stamp date of March 2016. During a background interview, he stated he intended to file his future tax returns in a timely manner. He attributed the late filing of his 2012 Federal and state income tax returns to not getting them done before going out of town and then forgetting about them. He did not explain the delay in filing his 2010 and 2011 Federal income tax returns or his 2009-2011 and 2013-2014 state income tax returns.

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

Applicant filed his 2010-2012 Federal income tax returns on the same day he submitted his response to interrogatories. He filed his 2009-2014 state income tax returns around the time he submitted his SOR response. His failure to file timely his tax returns casts doubt on his current reliability, trustworthiness, and good judgment. He failed to present evidence of circumstances beyond his control that impaired his ability to file his tax returns in a timely manner. Although he has filed his delinquent tax return and stated he plans to file timely his future tax returns, there is little reason to conclude he will comply with the law in the future. He has not established a track record of financial responsibility.

### **Discussion**

Citing to disqualifying condition 19(g) that provided a security concern could arise from “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,”<sup>1</sup> Applicant notes the “fraudulent filing” prong of that disqualifying condition was not applicable in his case and argues the Judge erred by not discussing that this inapplicable prong was mitigation in his favor. Applicant’s argument is not persuasive. A Judge need not address the portions of a disqualifying condition that are not applicable in a given case or give an applicant mitigative credit for those inapplicable provisions. *Cf.*, ISCR Case No. 15-05049 at 3 (App. Bd. Jul. 12, 2017) for the proposition that the Directive does not require admitted or proven security concerns be weighed or balanced against non-alleged guidelines. As it is a practical impossibility for a Judge to discuss each and every piece of record evidence (*see, e.g.*, ISCR Case No. 12-01500

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<sup>1</sup> The quoted language is from the prior version of the adjudicative guidelines (Directive, Encl. 2 ¶ 19(g)). The adjudicative guidelines were revised on June 8, 2017, and this disqualifying condition now reads, “failure to file or fraudulently filing annual Federal, state, or local tax returns or failure to pay annual Federal, state, or local income tax as required.” *See*, Directive, Encl. 2, App. A ¶ 19(f).

at 3 (App. Bd. Aug. 25, 2015)), it is equally unrealistic to expect a Judge to discuss the omission of all the evidence that is possibly relevant in a case. We find no error in the Judge's application of disqualifying condition 19(g).

Applicant contends that the Judge erred in her application of the mitigating conditions. In doing so, he cites to, among other matters, his filing of the delinquent tax returns before the record reached the Judge for consideration, his statement that he intends to file his future tax returns in a timely manner, his divorce and other conditions beyond his control, and his payment of his tax obligations. Of note, even if an applicant has resolved his financial delinquencies, a Judge may consider the underlying circumstances in evaluating an his or her security eligibility. *See, e.g.*, ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015). In this case, Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017).

Applicant also contends that the Judge misapplied the whole-person concept. He claims the Judge did not consider a sufficient period of his life and discusses evidence that supports each of the nine adjudicative process factors.<sup>2</sup> The Judge stated that she incorporated her comments under Guideline F in her whole-person assessment and concluded Applicant had not established a track record of financial responsibility. As in her mitigation analysis, the Judge could properly consider in her whole-person assessment the timing of Applicant's resolution of his tax filing delinquencies, *i.e.*, his filing of the delinquent Federal tax returns on the date he responded to interrogatories, his misstatement about the filing of his 2009, 2013, and 2014 state income tax returns, and his filing of the delinquent state tax returns around the time he responded to the SOR. *See, e.g.*, ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015) (an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests). Considering the record in its entirety, we find no reason to conclude that the Judge misapplied the whole-person concept.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017). 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

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<sup>2</sup> Directive, Encl. 2, App A ¶ 2(d).

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael 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