



The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 3, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 5, 2017, the SOR was amended. On May 2, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR, as amended, alleged that Applicant had five state tax liens; had a Federal tax lien; failed to file, as required, her 2011 Federal income tax return and had delinquent taxes for that year; failed to pay Federal taxes for 2013 and 2016 in a timely manner; and had another small delinquent debt. The Judge found against Applicant on six SOR allegations (three state tax liens, the Federal tax lien, and the failure to pay Federal taxes for 2013 and 2016 in a timely manner) and found for her on the remaining allegations.

In her decision, the Judge found, “The state tax authority confirmed that liens alleged in SOR ¶¶ 1.b (\$1,378) and 1.d (\$7,309) were mistakenly attributed to Applicant and she does not owe them.” Decision at 3. Yet, the Judge found against Applicant on SOR ¶¶ 1.b and 1.d. This apparent discrepancy represents a failure to articulate a satisfactory explanation for those adverse findings, *i.e.*, a rational connection between the facts found and the choice made. *See, e.g.*, ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015). Based on the facts of this case, we are unable to conclude this error is harmless.

In her appeal brief, Applicant provided some of the exhibits that she previously submitted to the Judge. Included with those exhibits is what appears to be the transmittal document for her post-hearing submission. This transmittal document is not included in the record.<sup>1</sup> In the decision, the Judge noted that Applicant provided post-hearing documents that were entered into the record as Applicant’s Exhibits (AE) O through R.<sup>2</sup> The transmittal document lists 14 documents that Applicant supposedly submitted, including an IRS Annual Installment Agreement for 2013 and 2014. Applicant refers to that Agreement in her appeal brief, but we cannot find it in the record.<sup>3</sup>

In her appeal brief, Applicant asserts the Judge made other errors in her findings of fact and conclusions:

- a. The Judge found, “Applicant has also entered into an installment agreement to resolve

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<sup>1</sup> The Appeal Board is prohibited from considering new evidence. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon questions of due process or jurisdiction. *See, e.g.*, ISCR Case No.14-00812 at 2 (App. Bd. Jul. 8, 2015).

<sup>2</sup> The record actually contains AE A through S. AE S consists of records pertaining to the criminal proceeding against Applicant’s former tax preparer. In her decision, the Judge cites AE S. *See* Decision at footnotes 8 and 12.

<sup>3</sup> In the record, there are two copies of IRS Installment Agreement Statements for 2014 and 2015. One of them contains a page of payment details for July 8, 2013, to July 7, 2014.

\$48,575 in outstanding federal taxes for 2009, 2010, 2011, 2013, and 2016.” Decision at 3. Applicant contends the current agreement is for 2009, 2010, and 2011 and notes the Judge found that the taxes for 2013 and 2016 were paid. Appeal Brief at 2.

b. The Judge found that Applicant and her husband have not attended financial counseling. Decision at 4. Applicant cites to page 54 of the transcript for the proposition that she testified about receiving financial counseling.<sup>4</sup>

c. The Judge found that Applicant’s husband “could not identify specific circumstances that prevented them from being able to timely pay their federal and state tax liabilities or adhering to their payment plans.” Decision at 4. Applicant challenges that finding by citing to pages 55, 112-114, 123, and 134-135 of the transcript and highlighting her surgeries, family illnesses, the help provided to family members, and her father’s death.

d. The Judge concluded that Applicant and her husband have a “history of sporadic repayment efforts.” Decision at 6. Applicant challenges that conclusion by stating she and her husband made 18-months of on time payments, made 29 of 36 payments over the course of a three-year period, and encountered difficulties in making payments in 2014 and 2015 due to Applicant’s surgery, illnesses of parents, and her father’s subsequent death. In making this argument, Applicant cites to her Tax Transcript for Tax Year 2010 and pages 123, and 134-135 of the transcript.

e. The Judge found, “Applicant and her husband have not hired a qualified tax professional.” Decision at 4. Applicant challenges that finding by stating that, although their new tax preparer is not a certified public accountant, he is qualified and cites to their 2015 and 2016 Tax Transcripts.

Based on the above, we conclude the best resolution of this appeal is to remand the case to the Judge for further processing consistent with the Directive. On remand, the Judge should work with the parties to confirm that the record correctly contains all of the post-hearing documents that Applicant submitted.<sup>5</sup> Then the Judge should issue a new decision addressing, as appropriate, the other identified errors. Applicant has raised other issues that are not ripe for consideration at this time.

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<sup>4</sup> In the appeal brief, Applicant also refers to “Subject Interview Contacts, dated 09/11/14-05/07/15, page 7” and indicates that Applicant made a statement to an investigator about receiving financial counseling from a financial credit counseling company. We cannot find that referenced document in the record and note that the record does not contain a summary of Applicant’s background interview with an investigator.

<sup>5</sup> The post-hearing transmittal document also reflects the number of pages for each document that was submitted. We note, however, the number of pages for some of the documents in the record do not match the number of pages reflected in the transmittal document.

**Order**

The Decision is **REMANDED**.

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