



Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 30, 2007, after the hearing, Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge erred in failing to mitigate the Guideline F security concerns raised in the SOR; and whether the Judge's whole person analysis is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant, 68 years old at the close of the record, filed for Chapter 7 bankruptcy protection in 1982, and was released from his dischargeable debts the same year. Applicant subsequently invested in a company that contracts with the DoD, owning 51% of the stock. The company filed Chapter 11 bankruptcy due to having lost a bid for a contract. In the 1990s, Applicant's company won a bid to manufacture items for the DoD but suffered a cash flow problem, resulting in the reopening of Chapter 11 bankruptcy protection. As a consequence of these financial problems, the company stopped paying its own federal taxes and the tax withholdings of its employees. As president and stockholder of the company, Applicant is personally liable to the IRS for approximately \$1,105,000. Applicant's company remains in Chapter 11 bankruptcy. Applicant lives frugally, his income consisting of a small salary from his company and social security payments. Applicant and his company are currently negotiating offers in compromise with the Internal Revenue Service (IRS). Applicant submitted evidence to the effect that he is a person of the highest character, integrity, and trustworthiness.

Applicant has not challenged the Judge's findings. Therefore, they are not at issue in this appeal. See ISCR Case 04-11369 at 2 (App. Bd. Mar. 16, 2007).

A Judge is required to "examine the relevant data and articulate a satisfactory explanation for" the decision, "including a 'rational connection between the facts found and the choices made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Appeal Board may reverse the Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32.3 and E3.1.33.3.

"[T]here is a strong presumption against granting a security clearance." *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions. See Directive ¶ E3.1.15. "The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole." See ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

While acknowledging the extent of his debt, Applicant contends that any security concerns associated with it are mitigated. For example, Applicant argues that the basis for the debt, business

misfortune, was beyond his control,<sup>1</sup> was isolated,<sup>2</sup> and not recent.<sup>3</sup> The gravamen of Applicant's brief on appeal, however, is that he is a mature man of high integrity who will not act to the detriment of his country, even if tempted by promises to pay off his debt. Applicant cites to a number of Hearing Office cases which he believes are consistent with granting him a clearance.

We have considered Applicant's brief in light of the Judge's decision and the record as a whole. While the Judge acknowledged the centrality of Applicant's business downturn to his financial problems, he nevertheless concluded that Applicant's tax debt is, to an extent, within his control. "Applicant's company was obligated to withhold funds from the employees' wages for their federal income tax. The company did not fulfill the further obligation to pay that money to the IRS. The company chose to utilize money owed to the U.S. Government in an attempt to save a floundering company. That is not a valid business decision." Decision at 7. The Judge went on to observe that Applicant's payments to the IRS "have been minimal compared with the amount of the debts." *Id.* The Judge concluded that Applicant had failed to meet his burden of persuasion that the security concerns in his case had been mitigated.<sup>4</sup> This conclusion bears a rational relation to the Judge's unchallenged findings. Therefore, we conclude that the Judge's treatment of the mitigating conditions is neither arbitrary, capricious, nor contrary to law.

As far as the Judge's whole person analysis is concerned, he gave explicit consideration to Applicant's professional accomplishments and his "impeccable character evidence." *Id.* He balanced that against the extent of Applicant's tax debt, concluding that it "raises his potential for pressure, coercion, exploitation, or duress." *Id.* We conclude that the Judge's whole person analysis complies with the requirements of Directive ¶ E2.2.1, in that he considered the totality of Applicant's conduct in reaching his decision. *See* ISCR Case No. 04-09959 at 6 (App. Bd. May 19, 2006).

The Board gives due consideration to the Hearing Office cases which Applicant has submitted in his appeal brief. However, such decisions are binding neither on Hearing Office Judges or on the Board. *See* ISCR Case No. 03-26115 at 3 (App. Bd. Apr. 5, 2007).

## Order

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<sup>1</sup>Directive ¶ E2.A6.1.3.3.

<sup>2</sup>Directive ¶ E2.A6.1.3.2.

<sup>3</sup>Directive ¶ E2.A6.1.3.1.

<sup>4</sup>The Judge also concluded that Applicant's debt to the IRS was recent and that it was not isolated. This is consistent with the ongoing nature of a federal tax debt, which is not extinguished by bankruptcy. *See* ISCR Case No. 02-31406 at 2 (App. Bd. Jul. 25, 2006) ("In this case, the Administrative Judge found that Applicant had a history of not meeting financial obligations which extended over many years. He had only recently resolved many of his debts and at the time the case was submitted for decision still had significant outstanding debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent, not isolated, and still ongoing.")

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairman, Appeal Board

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

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