



The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 6, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 31, 2008, after the hearing, Administrative Judge Erin C. Hogan denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings are based upon substantial record evidence; and whether the Judge’s adverse decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge found that Applicant had failed to timely file federal income tax returns for the years 1999 through 2004. As a result, he had incurred a tax debt, including late fees and penalties, of approximately \$63,954. Decision at 3-4. Additionally, the Judge found that Applicant had deliberately falsified his security clearance application (SCA) when in response to the questions as to whether he had debts that had been delinquent over 90 days and over 180 days respectively, he answered “no.” In reaching that conclusion, the Judge noted: “It is likely that Applicant was aware that his tax debts would be an issue based on his 30 year history of holding a security clearance.” Decision at 8-9.

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. “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).

The Board has examined the Judge’s decision and concludes that her material findings are supported by substantial record evidence. The Judge’s conclusion that Applicant knowingly provided false information on his SCA is sustainable. The Judge weighed the evidence supplied by Applicant and considered the application of relevant mitigating conditions, finding in Applicant’s favor on some of the Guideline F security concerns. Nevertheless, the record supports the Judge’s conclusion that Applicant failed to meet his burden of persuasion that it is clearly consistent with the interests of national security for him to have a security clearance. Accordingly, the Board holds that the Judge’s adverse decision is not arbitrary, capricious, or contrary to law.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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