Date: April 28, 2023

In the matter of:	)	
-----	)	ISCR Case No. 22-00133
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 18, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 13, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged four financial concerns, including three delinquent accounts that were placed for collection or charged off for approximately $66,000 and that Applicant filed Chapter 7 Bankruptcy in 2016. The Judge found in favor of Applicant on three of the allegations, but against him on SOR ¶ 1.a, an account charged off for about $48,000. On appeal, Applicant asserts that the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law, and failed to properly apply the mitigating conditions and whole-person analysis. Consistent with the following, we affirm.

Discussion

Applicant, who is in his early 40s, was divorced in about July 2020 and has two minor children. He has worked for a defense contractor and held a security clearance since 2007. As part of his clearance reinvestigation, Applicant participated in an interview in September 2021 and discussed the debt alleged at SOR ¶ 1.a. He explained that his ex-wife "was given full financial responsibility [for the debt] in their divorce and didn't make any payments." Government Exhibit (GE) 3 at 2. He had no documentation, however, substantiating that his ex-wife was responsible for the debt. *Id*. at 4. As of the interview, Applicant had made no arrangements for the debt and planned "to try and get the account off of his credit report to resolve the issue." *Id*. at 2.

Subsequently, in his March 2022 response to the SOR, Applicant denied liability for the debt. He explained that he had been required to pay on the account pursuant to a mediated separation agreement and, although he initially fell behind on payments while trying to maintain his house for his children, he ultimately "recovered, finished payments, and [the] account [was] removed from [his] credit report." SOR Response at 1-2.

Applicant then testified at hearing that he contacted a company to help him resolve the debt in or about May 2022. Tr. at 15. As of the hearing, he asserted that he had established a settlement agreement with the creditor for $22,000 to be paid in monthly installments of $457, the first of which was made the week before the hearing. Decision at 2; Tr. at 14; AE N. When questioned about his delay in resolving the debt, Applicant testified that he was working under the assumption that his ex-wife was making the payments, even though he was the responsible party, because they had spoken about it and because he was paying her alimony and child support. Tr. at 28. Applicant declined to ask his ex-wife directly whether she was paying the account because he "stay[s] out of her financial business," and acknowledged that he "made a poor assumption." *Id*.

The Judge found that, although Applicant's financial difficulties could be partially attributed to his divorce, he had "only recently begun to address his most significant past-due debt," which was "not due diligence on Applicant's part," and concluded that Applicant had "not demonstrated that future financial problems are unlikely." Decision at 5.

On appeal, Applicant contends that the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all the evidence, and by not properly applying the mitigating conditions and Whole-Person Concept. For example, Applicant argues that the Judge "did not place appropriate weight on . . . the good faith efforts made and [the] articulated plan to pay off underlying delinquencies." Appeal Brief at 5. However, the Judge's determination that it was "clear [Applicant] was aware of [SOR ¶ 1.a], but only began to address it . . . after the issuance of the SOR" is supported by the record, as is his conclusion that Applicant's response to the debt was insufficient to mitigate the financial concern. Decision at 2. Applicant's arguments on appeal advocate for an alternative weighing of the evidence, which is not enough to show that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant has not rebutted the presumption that the Judge considered all the evidence in the record, nor has he established that the Judge's conclusions were arbitrary and capricious.

Applicant has not established that the Judge committed harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, and the record evidence is sufficient to support that the Judge's findings and conclusions are sustainable. "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

Order

The decision is **AFFIRMED**.

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

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board