DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: May 26, 2023

In the matter of:	)	
----	)	ISCR Case No. 22-00334
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 1, 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 the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4, effective June 8, 2017, and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 27, 2023, after close of the record, Defense Office of Hearings and Appeals Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged five delinquent debts. The Judge found favorably for Applicant on three and adversely on the other two, which total about $25,900. Applicant raises the following issue on appeal—whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is in his mid-thirties. A high school graduate, he is seeking a security clearance for the first time. Applicant earns $25 an hour and provides all financial support for his three

children and his girlfriend, who stays at home with their children. Applicant has financial difficulties "caused by his impulsive and irresponsible purchases and not living within a budget." Decision at 2. For a fee of about $2,000, Applicant recently hired a credit repair agency to help him settle and pay his delinquent debts. Applicant put an initial deposit of $200 towards this fee with monthly payments to follow for 12 months.

Applicant resolved three alleged debts (SOR ¶¶ 1.b – d) in May and September 2022, after the SOR was issued. Each of the three debts was below $1,000. The two remaining debts are both for deficiency balances on auto loans. The first (SOR ¶ 1.a) is for an electric vehicle that Applicant purchased in 2016. Within a few months of purchase, Applicant recognized that he could not afford the monthly payments and that his access to a charging station was inadequate. He attempted to return the car to the creditor and was instructed to stop making payments. The car was then repossessed and sold at auction, resulting in a deficiency of approximately $17,700. That debt is unresolved. Applicant then purchased a used car in March 2017, but was in an accident shortly thereafter. He was not insured. The vehicle was sold at auction for scraps, and Applicant owed the deficiency of about $8,000. The creditor intends to send Applicant a Form 1099-C, and his credit report indicates that the account was "legally paid in full for less than the full balance." *Id*. at 3, citing Applicant Exhibit D.

Applicant did not make efforts to resolve his debts until after receiving the SOR. Although he recently hired a credit repair agency, Applicant still owes a significant sum to one creditor and has not started to resolve that debt. "None of the mitigating conditions are applicable." *Id*. at 6.

Discussion

In his appeal brief, Applicant argues that the Judge erred in several findings of fact and then relied upon those erroneous findings in her mitigation analysis. As one example, Applicant challenges the Judge's finding that he began to resolve his debts only after he received the SOR in April 2022. Applicant argues that he resolved the debt alleged in SOR ¶ 1.b in September 2020, well before issuance of the SOR, and that the Judge's erroneous finding permeated her mitigation analysis. Appeal Brief at 5, 11, 12-13. The record, however, supports the Judge's finding that the debt in question was paid in September 2022 and her conclusion that Applicant addressed the allegations only after issuance of the SOR. Applicant Exhibit B; Tr. at 39. Having examined the record and decision, we find no merit in any of Applicant's allegations of factual error.

Applicant also argues that the Judge did not properly apply the mitigating conditions. He argues, for example, that the Judge "makes no finding on the recency of the debts" and "does not provide a rational basis for how two auto loans from over six (6) years ago are indicative on the [Applicant] today." Appeal Brief at 11. It is well established, however, that an applicant's ongoing, unpaid debts evidence a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.*, ISCR Case No. 15-01690 at 3 (App. Bd. Sep. 13, 2016).

Additionally, Applicant argues that the Judge failed to recognize his good-faith efforts to resolve the two auto loans, noting that he has started payments to a credit relief agency for the debt alleged at SOR ¶ 1.a and will receive a FORM 1099-C for the debt alleged at SOR ¶ 1.e. Appeal Brief at 12, 13. The Board has long held that the concept of good-faith efforts to repay creditors

"necessarily includes evidence of actual debt reduction through payment on debts." *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). The Board declines to find that either an initial payment towards a credit repair agency's fee or the pending receipt of a FORM 1099-C for a charged-off debt constitutes a good-faith effort to resolve debts. *Id*.

The debt alleged at SOR ¶ 1.e is arguably resolved, as Applicant testified that he is pending receipt of a FORM 1099-C and submitted a credit report supporting that assertion. Even assuming that the deficiency was recently forgiven by the creditor, the Judge is not obligated to find favorably for Applicant on the debt, as she may consider all the circumstances surrounding the debt, including how it became delinquent and the manner in which it was ultimately resolved. *See, e.g.*, ISCR Case No. 03-04704 at 4 (App. Bd. Sep. 21, 2005).

None of Applicant's arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough 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. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Applicant failed to establish that the Judge committed any error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. His decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* AG ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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