Date: October 25, 2023

In the matter of:	)	
-----	)	ISCR Case No. 22-01402
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 9, 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 (Jan. 2, 1992, as amended) (Directive). On September 7, 2023, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 14 financial concerns, including delinquent consumer and medical debt totaling approximately $45,000. After it was originally issued, the Government amended the SOR to add an allegation that Applicant filed Chapter 7 bankruptcy in September 2022. In response to the SOR, Applicant denied all of the alleged debts but admitted filing bankruptcy. The Judge found against Applicant on all of the allegations.

On appeal, Applicant challenges the Judge's finding that he "filed a petition for Chapter 7 bankruptcy in September 2022, more than five years after consulting with the bankruptcy lawyer." Decision at 3. At hearing, Applicant made inconsistent statements about when he first contacted the bankruptcy lawyer.[1] He now asserts that he actually first contacted the lawyer in July 2018 and that, in either case, the time before filing in September 2022 was not more than five years.[2]

Applicant is correct that the passage of time between early 2018, as is noted in the decision, and September 2022 is just shy of five years. While the Judge's finding may be off by several months and therefore technically erroneous, the error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 10-01846 at 3 (App. Bd. Sep. 13, 2011). If the finding was intended to read that Applicant "contacted a bankruptcy lawyer in early *2017*," then the error would be merely typographical and the related conclusory finding that Applicant filed his bankruptcy petition more than five years after consulting with the lawyer would be correct. *See, e.g.*, ISCR Case No. 99-0500, 2000 WL 1273961 at *2 (App. Bd. May 19, 2000) (a mere typographical error in a judge's decision does not warrant remand or reversal). Either way, neither of the possible errors was harmful or warrants any relief on appeal.

Applicant also takes issue with the Judge's application of the Guideline F mitigating conditions. For example, he argues that, after receiving the original SOR dated August 9, 2022, which alleged the 14 delinquent consumer and medical debts, he was counseled by his chain of command to resolve the issues and contacted the bankruptcy lawyer several weeks later, on August 23. Appeal Brief at 2. In finding that mitigating condition AG ¶ 20(d) was not established, the Judge correctly referenced longstanding precedent that "an applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information." Decision at 6, citing ISCR Case No. 16-01211 at 4 (App. Bd. May 30, 2018). Applicant's arguments regarding the Judge's application of mitigating factors amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate 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).

Finally, Applicant submits new evidence in the form of updates regarding his finances. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

[1] Applicant first testified that he initially contacted the bankruptcy lawyer after his wife stopped working, which occurred at the end of 2017. Tr. at 33, 58. He subsequently testified that he first contacted the bankruptcy lawyer in early 2017, five years before filing the petition. Tr. at 35, 38. It is unclear which of these timelines the Judge relied upon in making the subject finding.

[2] Applicant's assertion regarding the July 2018 contact date technically constitutes new evidence, which the Board is prohibited from considering on appeal. Directive ¶ E3.1.29. Our analysis of this matter would not change, however, even if we were to consider the timeframe as Applicant now suggests.

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which is sustainable on this record. "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." AG ¶ 2(b).

Order

The decision is **AFFIRMED**.

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

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