KEYWORD: Guideline F

DIGEST: In her appeal brief, Applicant states the Judge agreed to a proposed repayment plan at the hearing and notes that payments toward certain debts under that plan would start in May 2019. The transcript does not support her contention that the Judge agreed to such a proposed plan. Moreover, DOHA is not a debt collection agency, and DOHA Judges have no authority to approve an applicant's debt repayment plan. In this case, the Judge correctly stated in his analysis that intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. Adverse decision affirmed.

CASENO: 17-00729.a1

DATE: 04/03/2019

DATE: April 3, 2019

In Re:	)	
	)	
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	)	
	)	
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 April 14, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 21, 2018, after considering the record, Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised 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

Applicant, who is 40 years old, has been an employee of a defense contractor since 2001. She has earned a master's degree. Her annual salary is about $124,000. Her work performance has been outstanding, and she has received numerous awards at work. She is married. Her husband's annual salary is about $45,000. She has two children and a stepchild. Her oldest child is a college student.

Applicant experienced financial problems while raising a child as a single mother. She did not receive financial assistance from the child's father. At that time, her student loans went into a deferment status, and she did not know they were transferred to another company. When she received letters from the company holding the loans, she thought they were solicitations to consolidate the loans and did not respond to them. In 2014, $1,200 of her monthly wages (more than her monthly mortgage payment) was involuntarily garnished to pay the student loans. She was unsuccessful in her efforts to lower the garnishment. While her wages were being garnished, she was unable to pay other debts. In late 2017, her student loan debt of $43,000 was paid completely through the garnishment. Additionally, her mother passed away in 2017, and she paid the funeral expenses.

Besides the resolved garnishment/student loans, the SOR alleged that Applicant had 26 other delinquent accounts. In her SOR response, she admitted all, but two, of the alleged debts.[1] Her SOR response claimed she paid some of the debts and would pay others in late 2017, but provided no documentation of those payments. She also asserted that she had a payoff plan to address 24 delinquent debts totaling about $40,200. The payoff plan was to start three months after the hearing.

[1] In her SOR response, Applicant stated the debts listed in SOR ¶ 1.bb (two defaulted student loans) were duplicates of the allegation in SOR ¶ 1.a (garnishment for student loans). Applicant neither admitted nor denied the allegation in SOR ¶ 1.bb.

Applicant's credit report from early 2018 reflected she made some payments on a delinquent credit card account.[2] She also provided documentation showing she made five payments to creditors totaling $180. Additionally, when she learned her child's tuition was not fully funded, she stopped making payments to some of the alleged creditors.

At some point, Applicant obtained the services of a credit correction company that sent letters disputing each of the SOR debts. She had 34 negative accounts removed from her credit report; however, there is no indication she made any payments on those accounts. She also testified that she had been "kind of lackadaisical" in paying off previous debts, but is aggressively trying to resolve the debts now that she is aware they affect her job. Decision at 6, quoting from Tr. at 73.

The Judge's Analysis

Applicant experienced some conditions beyond her control. An involuntary garnishment prevented her from making payments on other financial obligations. She presented documentation of making only five payment totaling $180 towards the alleged debts after the garnishment ended in late 2017. In her SOR response, she indicated that she had established certain repayment plans, but nine months later provided no evidence that payments had been made under them. Since the garnishment, she has not acted responsibly in addressing her debts. Numerous debts remain unresolved.

Discussion

In her appeal brief, Applicant states the Judge agreed to a proposed repayment plan at the hearing and notes that payments toward certain debts under that plan would start in May 2019.[3] The transcript does not support her contention that the Judge agreed to such a proposed plan. Moreover, DOHA is not a debt collection agency, and DOHA Judges have no authority to approve an applicant's debt repayment plan. In this case, the Judge correctly stated in his analysis that intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches, *citing* ISCR Case No. 11-14570 at 3, n.3 (App. Bd. Oct. 23, 2013). Additionally, Applicant argues she disputed certain debts that no longer appear on her credit report. In the findings of fact, the Judge noted that Applicant admitted most of the alleged debts, but she disputed all of them through a credit correction company, and provided no proof of payments on those negative accounts. In his analysis, the Judge correctly stated the Appeal Board has observed that debts dropping off an applicant's credit report is not meaningful evidence of debt resolution,

[2] The credit report reflected the debt in SOR ¶ 1.g for $528 was reduced to $297. Decision at 5.

[3] Applicant appears to be referring to the Judge's discussion of leaving the record open for a period for her to submit additional documentation. Tr. at 13-16. While the discourse may have confused her, it did not constitute an agreement to any plan, especially since no plan had been presented.

citing ISCR Case No. 14-05803 at 2 (App. Bd. Jul. 7, 2016). As we previously stated, there may be more than one plausible explanation for the absence of debts from a credit report, including the passage of time. *See, e.g.*, ISCR Case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004). Furthermore, Applicant indicates that she paid certain debts. The Judge, however, concluded that she provided insufficient proof of payments toward the alleged debts. The Appeal Board has previously noted it is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts. *See, e.g.*, ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Applicant has not identified any harmful error in the Judge's analysis.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. For example, she disagrees with the Judge's conclusion that Applicant has shown insufficient progress toward resolving the alleged debts. These arguments, however, are not sufficient to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision 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). *See also* Directive, Encl. 2, App A. ¶ 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: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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