

The Judge's Findings of Fact and Analysis

Applicant, who is in his early sixties, has worked for a defense contractor for about 24 years and has held a security clearance for about 15 years. He and his wife incurred significant debt by borrowing money and using credit cards. Their financial obligations also increased when their oldest son and his family moved back into their home. In May 2018, Applicant and his wife hired a credit-counseling company to assist them with their debt. The company advised him to stop paying on the accounts so settlements could be negotiated. When only one debt was resolved in a six-month period, Applicant stopped working with that company and began working with a law firm to help resolve the debts. He also sold non-essential assets to reduce the debt.

The SOR alleged that Applicant had seven charged-off debts totaling about \$94,000. In responding to the SOR, he admitted each allegation. Applicant has assets to pay the alleged debts, including over \$500,000 in a retirement account, about \$500,000 in home equity, and about \$1,500 as a net monthly income remainder. He also “has an ‘unvested’ interest in his employer’s public stock with a value of over \$345,000 and vested shares worth about \$28,000.” Decision at 5. The Judge found for Applicant on the three debts he resolved and against him on the four remaining unresolved debts. Three of the unresolved debts are no longer collectible due to the expiration of the statute of limitations, while the fourth is being disputed “under an unspecified legal theory.” Decision at 4. Applicant has resolved other delinquent debts that were not alleged in the SOR.

[Applicant] exercised poor judgment through excessive spending using multiple credit cards. His poor judgment continued by his reliance on his counselor’s advice to stop paying his credit cards when he could have continued to pay them and seek to negotiate settlements of all of his debts over time. Instead, he waited for time to elapse and render some of his debts unenforceable under applicable state statute of limitations. [Decision at 9.]

Discussion

Due Process Issues

Applicant’s appeal brief raises various due process issues. First, he contends that he emailed evidentiary exhibits to DOHA that were not presented to the Judge prior to the hearing. To the extent he is contending this was a procedural error that prejudiced him, we conclude no relief on appeal is warranted. About eight days before the hearing, Applicant emailed 14 exhibits to DOHA. The email and exhibits are included in the record. Correspondence File. At the hearing, the Judge noted he was presented with 17 exhibits prior to going on the record (Tr. at 26), which included the 14 exhibits provided in the email. The 17 exhibits were admitted into evidence as Applicant’s Exhibits G-W.¹ Since the Judge had the exhibits in question prior to rendering his decision, Applicant has failed to show how he was prejudiced by the delay in presenting them to the Judge.

¹ One page of the 14 exhibits is not included in the admitted exhibits. The missing page is a summary of a bank statement (Exhibit 13, page 1). The admitted pages of that exhibit (Exhibit 13, pages 2 and 3) contain the information that is in the missing page. The omission of the summary page from the admitted exhibit did not result in harmful error.

Second, Applicant claims Department Counsel made statements to him that “created an unfair hearing process.” Appeal Brief at 1. Coming from outside the record, these claims constitute new evidence, which we are generally prohibited from considering. Directive ¶ E3.1.29. We will, however, consider them because they raise due process claims. *See, e.g.*, ISCR Case No. 17-01472 at 2 (App. Bd. Aug. 6, 2018).

Applicant claims Department Counsel “provided recommendations to [him] on how to present evidence prior to hearing start which created an unfair hearing process and confusion for [him.]” Appeal Brief at 1. In making this generalized claim, Applicant provides no specific explanation as to how he may have been confused or prejudiced by Department Counsel’s purported statements. Prior to the hearing, Applicant was provided the Chief Administrative Judge’s Prehearing Guidance for DOHA Industrial Security Clearance (ISCR) Hearings and Trustworthiness (ADP) Hearings, dated January 15, 2019.² This guidance advised Applicant that he had a right to present evidence and witnesses; that he had a right to cross-examine witnesses against him, and that he had the right to object to evidence. Applicant has not claimed or shown that Department Counsel’s purported statements contradicted the Chief Judge’s guidance. Regarding this claim, it also merits noting there is a rebuttable presumption that Federal officials and employees carry out their duties in good faith, and a party seeking to rebut that presumption has a heavy burden of persuasion on appeal. *See, e.g.*, ISCR Case No. 00-0030 at 5 (App. Bd. Sep. 20, 2001). Applicant has not met that heavy burden in that he fails to identify anything in the record below that indicates or suggests a basis for a reasonable person to conclude that Department Counsel misled him or otherwise acted improperly, unfairly, or unprofessionally.

Applicant also claims Department Counsel “stated most people represent themselves and to just tell your story[.]” Appeal Brief at 1. To the extent Applicant is claiming Department Counsel somehow misled him by that statement and thereby caused him not to hire counsel or obtain personal representation, we do not find that argument persuasive. The record contains a letter that Department Counsel sent to Applicant more than a month before the hearing. It advised him that “[y]ou may represent yourself, retain an attorney, or obtain the help of a personal representative who could be a union representative, family adviser, knowledgeable friend, or anyone else. In making this decision, you should consider the Government is represented by an attorney and that any adverse determination could negatively affect your current job and your future employability.” Correspondence File, Department Counsel’s letter of July 1, 2021. The Chief Judge’s guidance also advised Applicant of his right to employ counsel, or to have some other person represent him during the proceeding. At the beginning of the hearing, Judge also asked Applicant if he understood that he had a right to have a lawyer. Applicant responded that he understood this right and indicated that he decided to represent himself. Tr. at 8-9. During the hearing, Applicant presented documentary evidence and testified on his own behalf. Applicant points to nothing in the record which he likely would have done differently had he been represented by counsel, or anything likely to have produced a different result. *See, e.g.*, ISCR Case No. 08-07352 at 2 (App. Bd. Jul. 28, 2009). Applicant has failed to show his right to counsel or a personal representation was impeded or infringed.

² A DOHA email of July 19, 2021 provided Applicant the prehearing guidance. Correspondence File. The prehearing guidance is also located on the DOHA website. *See* <https://doha.ogc.osd.mil/Industrial-Security-Program/Prehearing-Guidance>.

Third, Applicant further asserts Department Counsel “used [her] expert knowledge against [him.]” This claim raises no appealable issue. The Chief Judge’s prehearing guidance advised Applicant that the hearing was an adversarial proceeding. *See also* ISCR Case No. 03-06174 at 9 (App. Bd. Feb. 28, 2005). Department Counsel was responsible for representing the Government’s interests—not Applicant’s—in the proceeding.

Finally, Applicant contends that the Judge offered him only a short period of time to address the debts and notes that financial problems can take up to seven years to resolve. As the Judge indicated in his decision, a security clearance adjudication is not a proceeding aimed at collecting an applicant’s debts. Instead, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. *See, e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). An applicant is not entitled to delay or defer adjudication of security eligibility to resolve debts. *See, e.g.*, ISCR Case No. 06-22044 at 2 (App. Bd. Feb. 28, 2008). In this case, the Judge decided to keep the record open for about a month after the hearing to provide Applicant an opportunity to present additional evidence. When the Judge informed him of that decision, Applicant responded, “That would be fine.” Tr. at 93-94. The record does not reflect that Applicant submitted any request to extend the period for post-hearing submissions. Applicant has not shown the Judge’s decision regarding this issue was arbitrary, capricious, or contrary to law.

In summary, under the facts of this case, there is no basis to conclude that Applicant was denied the due process afforded by the Directive.

Analytical Issues

For three of the unresolved debts, Applicant argues that he exercised his consumer rights regarding them. He contends no further action need be taken regarding them, noting they have been charged off and the creditors have not requested further action from him. However, even if delinquent debts are legally unenforceable because the state statute of limitations has expired, a Judge may still consider the circumstances surrounding the debts, including any irresponsible actions in incurring or handling them, for what they reveal about an applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No. 02-26018 at 4 (App. Bd. Jun. 2, 2005). For the fourth unresolved debt, Applicant makes assertions from outside the record, which we cannot consider. Directive ¶ E3.1.29 (“No new evidence shall be received or considered by the Appeal Board.”).

Applicant’s remaining arguments are, in effect, a challenge to the way in which the Judge weighed the evidence. None of his arguments are sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02592 at 5 (App. Bd. Jan. 6, 2021). Applicant also notes the Judge’s unfavorable decision will have a negative impact on him. The Directive, however, does not permit us to consider such consequences. *See, e.g.*, ISCR Case No. 19-02020 at 2 (App. Bd. Oct. 26, 2020).

Conclusion

Applicant has failed to establish the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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*, Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security.”

Order

The decision is **AFFIRMED**.

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

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

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