



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: March 24, 2022

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 In the matter of:)
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 Applicant for Security Clearance)
 _____)

ISCR Case No. 20-03749

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 January 25, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for 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 January 28, 2022, after close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR contains 13 allegations. These allege that Applicant owed about \$22,900 in delinquent Federal taxes for 2013-2015, that she owed about \$15,400 in delinquent state taxes for 2015, that she was indebted for an unspecified amount on a mortgage that went into foreclosure in 2015, that she was past due almost \$7,000 on another mortgage account, and that she had seven other delinquent debts totaling about \$308,100. In responding to the SOR, Applicant admitted each of the allegations with explanations. The Judge found in favor of Applicant on the two mortgage allegations and on two debts totaling almost \$390. The Judge found against her on the other alleged debts. On appeal, Department Counsel has not raised any issues regarding the Judge’s favorable findings.

In her appeal brief, Applicant does not challenge any of the Judge’s specific findings of fact. Rather, she contends the Judge’s decision is arbitrary and capricious. Applicant argues that she poses no threat to national security, that the facts in her case do not raise security concerns,¹ and that the Judge’s decision “was an overreach and lacks merit.” Appeal Brief at 1. We do not find these arguments persuasive. Guideline F security concerns are broader than the possibility that an applicant might knowingly compromise classified information in order to raise money to satisfy delinquent debts. Such security concerns also encompass the risk that applicants who are financially irresponsible might also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See, e.g.*, ISCR Case No. 16-04112 at 3-4 (App. Bd. May 28, 2019). Having admitted the delinquent debts for which the Judge entered unfavorable findings, Applicant had the burden of mitigating the security concerns arising from those debts.

In her brief, Applicant addresses each of the alleged debts, including those in which the Judge found in her favor. The Appeal Board is tasked to address material issues raised by the parties to determine whether the Judge committed harmful error. Directive ¶ E3.1.32. We need not address Applicant’s assertions regarding the Judge’s favorable findings. She does, however, raise two issues regarding the unfavorable findings that merit addressing. These involve her tax debts and a large disputed debt.

Applicant’s brief notes that her past-due Federal taxes for 2013 and 2014 were paid in full, but acknowledges that she still owes about \$18,200 in delinquent Federal and state taxes for 2015. In the decision, the Judge found that Applicant resolved her Federal tax liability for 2013 and 2014; that she instituted repayment agreements with the IRS and the state that were eventually cancelled for apparent lack of payment compliance; that she eventually decided to resolve the Federal tax debt through future tax refund withholdings;² and that she is resolving the state tax debt through payments under a new installment agreement that started in September 2021. Additionally, the Judge found that Applicant made a \$1,000 payment to the IRS after the hearing. In his analysis, the Judge concluded:

In Applicant’s case, she has failed for the most part to take any documented voluntary steps to address her accumulated delinquent federal and state tax . . . and provide persuasive proof of her voluntary resolving these debts.

¹ In her SOR Response, Applicant made a similar argument. In the decision, the Judge noted, “[Applicant] claimed generally that she did not have any of the underlying conditions characterized as potential problems under the financial considerations guideline.” Decision at 2.

² In her appeal brief, Applicant acknowledges the decision to rely on tax refund withholdings to resolve this indebtedness was a mistake. She states, “I explained I had tried to reinstate a payment plan with the IRS on a few occasions but after being on hold on the telephone for hours each time and not being able to start a payment plan, I settled on the use of tax refunds to settle the debt as a strategy. It was brought to my attention this was a fool hardy way to settle the matter and I agree.” Appeal Brief at 2.

While Applicant is credited with making some voluntary payments on her 2013-2015 federal tax and 2015 state tax payment obligations, most of the tax and other payments were credited through involuntary levies on her scheduled tax refunds for other years. Debts reduced through involuntary initiatives, such as creditor levies, attachments . . . , generally do not meet the mitigation requirements of MC [Mitigating Condition] ¶ 20(d), “the individual initiated and is adhering to a good-faith [effort] to repay overdue creditors or otherwise resolve debts.” Absent more evidence of voluntary payment initiatives on Applicant’s part to discharge her documented delinquent federal taxes for tax year 2013-2015, state taxes for tax year 2015 . . . , MC ¶ 20(d) is not available to Applicant. [Decision at 11-12.]

We find no error in this analysis. The satisfaction of a debt through involuntary payments—such as a tax levy or the withholding of tax refunds—is not the same as, or similar to, a good-faith initiation of repayment by the debtor. *See, e.g.*, ISCR Case No. 16-03122 at 3 (App. Bd. Aug. 17, 2018). Moreover, although Applicant’s Federal tax debts for 2013 and 2014 are resolved, the Judge was not precluded from finding against her on those debts. As we have previously stated, even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017). The Judge’s unfavorable findings regarding the SOR tax allegations are sustainable.

SOR ¶ 1.g alleges that Applicant was delinquent on a credit card debt in the approximate amount of \$214,175. Applicant disputes this debt, which relates to a private business she operated from 2004 to 2015. This dispute involves the billing model that an internet search-engine company uses for charging advertisers on its platform. More specifically, the dispute centers on Applicant’s claim that she should be billed for “visits” to rather than “clicks” on her website. Applicant contends there were only 839 visits to her website and disputes being charged for 71,000 clicks. In this regard, the Judge found:

Ensuing investigations by both the credit card issuer and the charging internet merchant with Applicant-supplied data produced favorable results for the financing credit card firm who confirmed that validity of the billings. (AEs F and H; Tr. 90-91) Communications between Applicant and the internet merchant whose services she used for her business advertising never facilitated any kind of resolution of the charges billed to SOR creditor 1.g. Unable to convince her creditors of the validity of her claims, Applicant ceased all communications with both the creditor and internet merchant after June 2014. (GEs 2-4 and AEs F and H; Tr. 38-46) Applicant’s dispute with SOR creditor 1.g has never been resolved. (Tr. 92) Credit reports confirm that in 2016 the debt was charged off to profit and

loss. (GEs 2-4) And, the debt has since been removed from Applicant's 2021 credit report. (GEs 2-4 and AE C; Tr. 34-35, 136-137).

* * *

Without more evidence from Applicant on the substantive grounds of her dispute with SOR creditor I.g, and any prior initiatives taken by Applicant with the creditor and its internet customer to resolve her dispute amicably, either bilaterally or through mutually enlisted arbitration and mediation services available in her community, before suspending any further payments to the creditor, the debt dispute issues raised by Applicant cannot be favorably resolved. [Decision at 6.]

In his analysis, the Judge concluded that Applicant provided insufficient evidence to support the application of Mitigating Condition 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis for the dispute or provides evidence of actions to resolve the issue[.]" Directive, Encl. 2, App. A ¶ 20(e). Based on our review of the record, we find no error in the Judge's conclusion that Applicant did not meet her burden under this mitigating condition to produce sufficient documentation to show she had a reasonable basis to dispute the legitimacy of this debt.³ Furthermore, the fact that a debt is no longer reported on her recent credit report is not meaningful evidence of debt resolution. *See, e.g.*, ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016).

Applicant's brief also highlights her efforts to resolve her financial problems. None of her arguments are sufficient to demonstrate the Judge reached conclusions that were arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Additionally, Applicant contends the revocation of her security clearance will have a negative impact on her. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 19-01206 at 2 (App. Bd. May 13, 2020).

Applicant failed to establish that 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."

³ Of note, Applicant did not provide a copy of her contract with the internet search-engine company to support her claim that the billing was in error.

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