



### **The Judge's Findings of Fact:**

Applicant is in his early fifties and holds both a bachelor's and master's degree in engineering. He has worked steadily in his field since at least 1999, with a brief two-month period of unemployment in 2019. After a divorce in 2014, Applicant was responsible for several debts but could not pay initially. In the years that followed, various creditors attempted to collect. However, on the advice of an attorney, Applicant elected to allow the statute of limitations to run on the delinquent accounts. In 2019, he contacted the creditor who held two of the three alleged accounts to negotiate a settlement. That attempt was unsuccessful: the creditor offered to settle for 55% of the delinquencies, but Applicant was unwilling to pay more than 25%.

In his Answer to the SOR, Applicant and his attorney noted that the statute of limitations had now run, freeing him from legal liability for the debts. He submitted a credit report from October 2021 which indicated several of the debts would be removed in the coming year.

The three delinquent debts were for bank credit cards and a line of credit that were used for family expenses during his first marriage. Applicant has refused to pay the balances despite now having the ability to do so. The accounts no longer appear on the most recent credit reports. While the statute of limitations may have run and the accounts are no longer being reported, the accounts remain unresolved.

There is no evidence of financial counseling, a budget, or anything to describe with any specificity Applicant's current financial situation. . . . Applicant did not report his net monthly income, his monthly household expenses, or any monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. There is a paucity of evidence to indicate that his financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than he had been, or if he has the funds available to pay his debts but is simply choosing not to do so. [Decision at 4.]

**The Judge's Analysis:** The Judge's analysis is quoted below, in pertinent part.

Because [Applicant] was in the process of rebuilding his life with his new wife, on the advice of an attorney, he decided to allow the statute of limitations to run so that he would be no longer legally liable for the debts. Instead of accepting his financial responsibilities and resolving those debts – debts incurred by him in receiving things of benefit from the creditors while married to his first wife – he chose to ignore those debts. In 2019, one creditor of two separate debts offered to settle those accounts for 55 per cent of the unpaid balance, but Applicant was only willing to pay 25 per cent.

. . .

While he may not be legally liable for those delinquent debts because of the statute of limitations, and those debts may have been removed from his credit reports,

Applicant has not acted responsibly by failing to address those delinquent accounts while employed . . . .

. . . .

There is no evidence of financial counseling, a budget, or current financial information. Applicant's actions or in-action under the circumstances cast significant doubt on his current reliability, trustworthiness, and good judgment. [Decision at 6–9.]

## **Discussion**

### Legal Advice and the Statute of Limitations

Applicant asserts that he acted upon legal advice in allowing the statute of limitations to run. First, the Board has repeatedly noted that reliance on a statute of limitations does not constitute a good faith effort to resolve financial difficulties. *See, e.g.*, ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005). Second, Applicant's reliance on legal advice is similarly misplaced, as he now recognizes: "I repeat that at this point I consider that the attorney advice was not the best." Appeal Brief at 3. For years, Applicant did not heed valid collection efforts from various creditors: the fact that he did so upon legal advice in the context of a divorce proceeding does not extinguish the Government's security concerns. A security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. The Federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. *See, e.g.*, ISCR Case No. 01-09691 at 3 (Mar. 27, 2003).

### Error in the Findings of Fact

Applicant challenges the Judge's finding that he did not submit a monthly budget, pointing to the completed Personal Financial Statement that is included in his response to the Government's interrogatories. That document—admitted without objection as part of the Government's case—details Applicant's monthly income, monthly expenses, monthly remainder, debts, and assets. GE 3 at 48. From the Judge's findings of fact and analysis, it appears clear that he overlooked this particular page in his review of the evidence.

Having established that the Judge failed to consider this document, the Board must determine whether that error was harmful, requiring remand. If there is a significant chance that the case might have been decided differently, but for the error, that error is harmful. Conversely, an error that likely had no effect on the Judge's decision is harmless. *See, e.g.*, ISCR Case No. 00-0250 at 6 (App. Bd. Jul. 11, 2001).

Reviewing the record in its entirety, the Board concludes that the error does not warrant remand because there is not a significant chance that the Judge would have reached a different decision had he reviewed the Personal Financial Statement. The Judge's decision rests on Applicant's failure to address his debts and his election, instead, to allow the statute of limitations

to run. The Judge specifically finds that he lacks current financial information and cannot “determine if [Applicant] has any monthly remainder available” and whether “he has the funds available to pay his debts but is simply choosing not to do so.” Decision at 4. Our review of Applicant’s Personal Financial Statement confirms that Applicant had available funds and assets to address these delinquencies. Inarguably, that information does not help Applicant’s case and would not result in a different decision by the Judge. We conclude that the error was harmless.

#### New Evidence and Lack of Security Risk

Applicant makes no other assertion of harmful error on the part of the Judge but does submit additional details and background information to supplement the evidence that was before the Judge. Those matters constitute new evidence, which the Board is not authorized to consider. Directive ¶ E3.1.29.

Finally, Applicant argues that the debts do not make him a security threat, as he could not be “forced to steal or do something wrong . . . to pay them.” Appeal Brief at 4. We do not find this argument 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, Applicant had the burden of mitigating the security concerns arising from those debts and failed to do so.

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: 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 Modzelewski

Moira Modzelewski  
Administrative Judge  
Member, Appeal Board