DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: May 4, 2022

In the matter of:	)	
-------	)	ISCR Case No. 19-03309
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 February 6, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis of 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 24, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged nine delinquent consumer accounts that totaled approximately $28,000. The Judge found for Applicant on one minor debt and against Applicant on the remaining eight allegations. Applicant asserts that the Judge erred in his findings of fact, that he improperly relied upon evidence that was not admitted, and that his delinquent debts have been mitigated by the passage of time, in that collection is now barred by the statute of limitations. Consistent with the following, we affirm.

Judge's Findings of Fact: The Judge's factual findings are summarized below, in pertinent part:

Applicant is 43 years old. He has one child from his first marriage, which ended in divorce in 2014. He has a job offer from a defense contractor, which is contingent upon a security clearance. He is currently attending college online and is a few months away from earning a bachelor's degree.

Applicant was born overseas, immigrated to the United States in 2003, and became a U.S. citizen in 2011. His first wife is also from his country of origin. Applicant and his first wife owned a business from 2005 to 2014 that ultimately failed. Applicant had a low-paying job at a bank from early 2013 until early 2014. In 2014, Applicant and his ex-wife decided that the best option was for Applicant to return to his country of origin with the child while his ex-wife completed her degree in the United States, as Applicant had financial problems resulting from the failure of his business, his divorce, and his inability to find a better-paying job. When his ex-wife completed her degree in 2017, Applicant came with the child to the United States, left the child with his ex-wife, and returned to his country of origin where he still lives.

In his answer to the SOR, Applicant admitted all of the debts, with the exception of a $145 debt that he successfully disputed with Experian in 2018. Of the remaining eight debts, seven became delinquent between 2013 and 2014 and no longer appear on the recent credit reports submitted by the Government. The eighth debt became delinquent in 2015; the Government's credit reports confirm that it too will fall off all reports by early 2022.

Applicant has not paid any of the debts alleged in the SOR. His second wife has a job in country of origin, but earns a low salary. Applicant is focused on finishing his education in order to obtain a better job upon his return to the United States and will pay his debts when he has the means to do so. To finance his online education, Applicant has taken out about $60,000 in student loans, which are currently deferred.

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

> Applicant attributed his financial problems to the failure of his and his ex-wife's business, his divorce, and his inability to find a better-paying job than the one he had before he quit in 2014. . . . His long term plan is to obtain his bachelor's degree, return to the United States, get a good job, bring his [current] wife to the United States, and pay his debts once he has the means to do so. . . . Applicant does not have a track record that would enable me to project with any degree of certainty that he will complete his long-term plan and pay his debts. . . . There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good faith effort to pay his debts. [Decision at 5–6.]

Discussion

Applicant alleges that the Judge erred in the following findings: that Applicant was the joint owner of a business with his first wife; that the business failed; and that Applicant's financial difficulties were, in part, attributable to that failure. Applicant asserts that his ex-wife was the owner of the business and cites to Applicant Exhibit (AE) 26, their joint Federal tax return for 2013, for corroboration. Applicant speculates that the Judge obtained the erroneous information from Government Exhibit (GE) 2, the summary of Applicant's clearance interview, which Applicant objected to and which the Judge did not admit. Applicant asserts that this error was prejudicial in several regards:

> These erroneous findings and analysis based on non-existent information likely contributed materially and negatively towards his assessment of mitigating factors, and the whole person concept analysis. The likely review of evidence that was successfully objected and excluded from the record is also contrary to law. I strongly feel that excluded item would have had a negative influence on the judge's decision and has effectively violated my rights in this case. [Appeal Brief at 2.]

However, our review of the record indicates that the Judge's misunderstanding as to ownership of the business was based upon properly admitted evidence and testimony at the hearing, and not upon any improper consideration of GE 2. Moreover, we conclude that any error was harmless.

As Applicant asserts, Schedule C of the couple's 2013 joint Federal tax return establishes that his wife owned a travel agency and that it was not jointly owned. AE 26 at 5. However, the Schedule C is the only evidence of ownership in the documents of record, and the matter of ownership of the business was neither in issue nor discussed at Applicant's hearing. Other documents, however, give rise to a reasonable interpretation that Applicant was a joint owner. Most importantly, in his security clearance application (SF86) of September 2018, Applicant reported his employment for 2005 through 2014 to be "Self-employment" as manager of the travel agency. GE 1 at 22. Moreover, Applicant's joint Federal tax return for 2013 indicated household income from the business in the amount of approximately $25,000. AE 26 at 1. His Federal returns for subsequent years indicate no income from that business. In his testimony, Applicant stated repeatedly that his debts became delinquent in 2014 "due to the divorce and severe loss of income." Tr. at 29, 30, 31. Taken together, this evidence of record contains ample indicia for the Judge to conclude that Applicant was a co-owner of the travel agency business and that the business faltered in 2014.

Conversely, and contrary to Applicant's speculation, the summary of his clearance interview is not a likely source of the Judge's misunderstanding, as GE 2 states clearly that Applicant's ex-wife owned the travel business:

> In 2012, [Applicant] and his wife began having financial difficulties because the travel agency business his wife was operating began falling off because of the housing market bust . . . . In 2011 the subject and his wife began experiencing financial difficulties because the subject's wife had a travel agency business that began declining because of the housing market bust. [GE 2 at 3,13.]

In sum, our review of the entire record confirms both that the Judge was mistaken in his conclusion that Applicant was a joint owner of the travel agency business and that his mistake arose from evidence that was properly admitted and not from GE 2. Moreover, we find any error harmless, as it did not likely have an impact on the outcome of the case. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020). We are not persuaded by Applicant's argument that this nuanced misunderstanding (*i.e.*, his loss of income was due to the divorce and loss of spousal income rather than to a failure of the couple's business) could have in any way affected the Judge's assessment of mitigating factors or his whole person analysis.

Applicant also argues that his debts are mitigated by the passage of time, as the statute of limitations has run, thereby "eliminating the potential for pressure, coercion, exploitation, or duress." Appeal Brief at 2. 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, even if debts have been rendered uncollectable due to a statute of limitations, a judge may still consider the underlying circumstances of an applicant's financial difficulties in evaluating whether he has demonstrated good judgment, trustworthiness, and reliability. *See, e.g.*, ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). Finally, Guideline F security clearance decisions are not limited to consideration of whether an applicant is vulnerable to coercion or blackmail. Those 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 4 (App. Bd. May 28, 2019).

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 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