Date: May 13, 2022

In the matter of:	)	
-------	)	ISCR Case No. 21-01169
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 15, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 25, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the Judge found against Applicant on five allegations of financial concern and found favorably on six. Additionally, the Judge found favorably for Applicant on the Guideline E allegations. The favorable findings are not in issue on appeal. The Applicant raised the following issues on appeal: whether the Judge failed to consider all the evidence, whether the Judge failed to apply the mitigating conditions, and whether her adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

As a preliminary matter, we note that the Judge failed to make a formal finding regarding SOR ¶ 1.h. This apparent oversight has not been raised as an issue on appeal. We simply point out that judges are required to address all of the allegations in a SOR. Executive Order 10865 § 3 (7); Directive ¶ E3.1.25.

The Judge's Findings of Fact: The Judge's pertinent findings are summarized and quoted below:

Applicant is in his late forties. He served in the military from 1991 through 2011. He has been consistently employed since 2011 and has been with his current employer since 2016. Married with three children, Applicant is separated from his wife and lives with his girlfriend.

The SOR lists a court judgment and 11 financial delinquencies totaling about $139,200. In his Answer to the SOR, Applicant admitted to the judgment and eight of the delinquent debts. He stated that some accounts are duplicates, that he is making payments on several accounts, and that he hired a debt management company to assist him in resolving his debts. His most recent credit report in September 2021 indicates nine delinquent accounts that total approximately $70,920.

> As to SOR 1.a., in the amount of $4,728 for a 2019 judgment, Applicant admitted that he believed it had been paid. He submitted a document from the debt management company showing he settled the debt for $1,575 on June 14, 2021.
>
> As to SOR 1.b, in the amount of $34,420 for a collection account, Applicant admitted and claimed that he pays $600 a month on the account. He did not provide any documentation. Applicant's 2021 credit report reflect the debt as charged off.
>
> As to SOR 1.c, in the amount of $13,500 for a charged-off account Applicant stated that he pays $300 a month with a direct withdrawal. He did not provide any documentation.
>
> As to SOR 1.d, in the amount of $8,505 for a charged-off account, the account is with the debt management company. Applicant intends to pay this bill in the future.
>
> As to SOR 1.e, in the amount of $6,527 for a charged-off account, he denied because it had been paid in June 2021.
>
> As to SOR 1.f, in the amount of $3,946, for a charged-off account, he admitted and stated that this account is with the debt management company. The account is reflected on his 2021 credit bureau report as charged off.
>
> As to SOR 1.g, in the amount of $2,339 for a charged-off account, Applicant denied because it is a duplicate of the account in SOR to the same creditor. He is paying on this account monthly. This account 1.h does appear to be a duplicate.

As to SOR 1.i, in the amount of $12,477, for a charged-off account. Applicant admitted and stated that this account is with the debt management group.

As to SOR 1.j in the amount of $5,747, Applicant believed it was paid through the debt management company. It is reflected on the latest credit bureau report with a zero balance.

As to SOR 1.k, in the amount of $38,795, Applicant denied this account and stated it was a duplicate of SOR 1.b. This appears to be accurate because the latest credit report shows it was transferred to another account and had a zero balance.

As to SOR 1.l, for a mortgage account that is past-due in the amount of $6,255, with a total balance of $194,327, Applicant admitted that he is working with the bank currently processing paper work again. He stated that he had a payment that was late in June. He did not provide the year in his answer.

Applicant submitted documents from the debt management company that showed he has paid money to them since at least 2016. The documents do not identify which accounts received the money. [Decision at 2-3.]

Applicant's interview for his clearance revealed that his financial problems began in 2016 after his spouse lost income, reducing the overall family income by approximately $40,000. Supporting two households, Applicant used credit cards to supplement the income. Applicant stated that he was naïve regarding finances and allowed balances to accrue. When he attempted to negotiate, most creditors refused. He entered into an agreement with his debt management company and pays them $700 monthly, with a $500 service fee. For his subject interview, Applicant listed the debts that are now with his debt consolidation firm, but it is not clear from the record which accounts have been settled or paid.

Applicant's net monthly salary is $4,480, his military retirement is $600, his VA disability payment is $3,492, and his co-habitant's net monthly income is $1,000, for a total of $9,572.

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

AG ¶ 20(a)[1] is partially established. Applicant and his wife separated in 2016 and he lost $40,000 of family income. He does not live with her and will get divorced. . . .

AG ¶ 20(b)[2] is not fully established. While Applicant's separation was a condition beyond his control, he has not acted responsibly to address the resulting debt.

[1] AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Directive, Encl. 2, App. A.

[2] AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear

AG ¶ 20(c)[3] and 20(d)[4] are established. Applicant responded to the SOR and provided documentation of obtaining the services of a debt consolidation company. The documentation did not show all the accounts that were in the plan, but his debt has been reduced to $70,920. While this is not an insubstantial amount of money, he is gainfully employed and has been paying his creditors. He has taken credit counseling.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR for lack of sufficient evidence and documentation. For these reasons, I find he has not fully mitigated the security concerns under the financial considerations guideline. [Decision at 7.]

Discussion

Applicant has not challenged any of the Judge's specific findings of fact. Rather, he first contends that the Judge erred by not considering all of the available evidence. In this regard, Applicant's counsel failed to comply with a fundamental requirement of the directive—"The appeal brief must . . . cite specific portions of the case record supporting any alleged error." Directive ¶ E3.1.30. Our review confirms that the evidence Applicant recites is included and fully considered in the Judge's decision. Applicant has failed to carry his burden in that he has cited to no specific evidence ignored or overlooked by the Judge.

Secondly, Applicant contends that the Judge failed to apply the mitigating conditions properly, resulting in an arbitrary and capricious decision. In particular, Applicant highlights that the Judge found that the Applicant established two mitigating conditions—AG ¶¶ 20(c) and 20(d) — but nevertheless denied the clearance.

We note first that there is a paucity of evidence in the record to support the Judge's conclusion that AG ¶¶ 20(c) and 20(d) are established. Using the Government's most recent credit report (Item 4), the Judge calculated that Applicant's debt was reduced from the $139,200 alleged in the SOR to approximately $70,920. Decision at 2. However, our review of Item 4 establishes delinquent debt of approximately $97,700.[5] Moreover, the most significant reduction in debt is simply a function of the Judge removing a duplicative SOR debt of approximately $38,700 (SOR 1.k.). Decision at 3. Both in his clearance interview and in his response to the SOR, Applicant asserted that he retained a law firm in 2016 to manage his debt and that he was paying off his debts through that firm. With his response to the SOR, Applicant submitted documents indicating that

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances. Directive, Encl. 2, App. A.

[3] AG ¶ 20(c): the person has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control. Directive, Encl. 2, App. A.

[4] AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. Directive, Encl. 2, App. A.

[5] This figure includes a delinquent debt of about $12,300 that was not alleged on the SOR. Item 4 at 1.

one of the alleged debts—SOR ¶ 1.a.— has been paid through the services of the law firm, but Applicant has submitted no other evidence of a payment plan with the law firm or reduction of the other alleged debts. The record before us does not confirm that there are "clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c), or that Applicant is "adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d). Because we are not persuaded that AG ¶¶ 20(c) and 20(d) are established, we are likewise not persuaded by Applicant's argument that mitigation under these two paragraphs should necessarily result in a grant of a clearance.

A Judge's decision must be written in a manner that allows the parties and the Board to discern what findings the Judge is making and what conclusions he or she is reaching. *See, e.g.*, ISCR Case No. 18-00695 at 3 (App. Bd. Sep. 20, 2019). The Judge's decision in this case creates confusion in at least three regards. First, as noted above, she miscalculated the debt reflected on the most recent credit report and, consequently, credited Applicant with making more inroads on his debt than the record supports. Second, the Judge determined in her findings of fact that the debts alleged at SOR ¶¶ 1.b., 1.c., and 1.i., totaling approximately $60,400, were charged off and that there was no documentation of any payments. Without further discussion or explanation, the Judge found favorably for Applicant on those same debts in her Formal Findings. Third, the Judge mis-read Applicant's clearance interview (Item 10) and attributed the loss of $40,000 in income to his wife and their separation, when in fact it was Applicant's girlfriend who lost income in 2016, after Applicant had separated from his spouse. The Judge cited to this erroneous fact in her analysis under AG ¶¶ 20(a) and 20(b), and Applicant's counsel predicated portions of his appeal brief on this erroneous finding.

The Judge's apparent errors were favorable to Applicant. However, she ultimately concluded that Applicant failed to submit sufficient evidence and documentation and thus failed to fully mitigate. Consequently, any errors appear harmless, as they likely would not have altered the Judge's final decision. *See, e.g.*, ISCR Case No. 10-01021 at 3 (App. Bd. Nov. 18, 2011). Said differently, if the Judge calculated Applicant's current delinquent debt to be $97,700 and not $70,900 or if she found against him on additional debts, it's not likely that she would change her adverse decision to a favorable one. Given these circumstances, we conclude that no benefit would be gained by remanding the decision to the Judge to clarify and correct the record. *See, e.g.*, ISCR Case No. 18-00695 at 3.

The Judge's key conclusion—that Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR for lack of sufficient evidence and documentation—is sustainable on the record. Our review confirms that there is very little documentation to corroborate Applicant's claims that he has been making consistent payments through his law firm and scant evidence that his financial problems are under control.

None of Applicant's arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Although we give due consideration to the Hearing Office cases that Applicant's counsel has cited, they are neither binding precedent on the Appeal Board nor sufficient to

undermine the Judge's decision. *See, e.g.*, ISCR Case No. 17-02488 at 3–4 (App. Bd. Aug. 30, 2018).

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. "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 Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board