

Date: June 16, 2022

In the matter of:	)	
	)	
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-----	)	ISCR Case No. 20-00906
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 5, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 31, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

Applicant's SOR alleged seven delinquent debts totaling nearly \$50,000. He attributed his financial problems to three months of unemployment in 2018. The Judge resolved two of the allegations in Applicant's favor but entered adverse findings for the remaining ones, including a credit card delinquency of over \$16,000 owed to a credit union. Although Applicant had payment plans for two of the SOR accounts, he did not present evidence that he had made payments. In addition, Applicant indicated that he was unaware of some of his debts, and he failed to substantiate the basis for a claimed dispute of one of them. Although he hired a credit repair agency to assist him with his debts, Applicant did not explain what services the agency was providing. When he completed his security clearance application (SCA) in 2018, Applicant did not disclose any of his delinquent debts. Although the Judge found that Applicant may have been genuinely unaware of some of the debts, he found that Applicant's failure to disclose the credit card account described above was deliberate.

The Judge concluded that, though Applicant's financial problems were affected by a circumstance beyond his control—his unemployment—Applicant had not presented evidence of reasonable action in regard to his debts. He noted a paucity of evidence concerning any benefits conferred by Applicant's credit repair agency, and he stated that there are no clear indications that Applicant's problems are being resolved or are under control. Regarding Guideline E, the Judge found Applicant's explanations for his failure to disclose the credit card debt to be "problematic." Decision at 7. He noted that Applicant had an opportunity to correct the omission during his interview but failed to do so until the interviewer confronted him with the debt. The Judge concluded that Applicant had not mitigated the SOR concerns raised under Guidelines E and F.

Applicant challenges the Judge's findings and conclusions concerning his failure to disclose his debt to the credit union. The SOR actually alleged two debts owed to this creditor, a car loan and the credit card account addressed above, neither of which Applicant disclosed in his SCA. Applicant contends that, during the interview, the investigator confused the car loan with another debt owed to a different creditor. "[Applicant] was not confronted with his [credit union car loan] account . . . [Applicant] had no intent to omit information from his SCA or his interview[.]" Appeal Brief at 6. We construe this argument to mean that the investigator mistakenly believed that the car loan was owed not to the credit union but to some other creditor. Accordingly, he did not confront Applicant with the true creditor to whom the car loan was owed, which undermines the Judge's finding that Applicant did not correct this omission before being confronted with the debt.

However, the evidence underlying the Judge's Guideline E analysis does not pertain to the car loan. Rather, it pertains to the credit card debt. The summary of Appellant's clearance interview demonstrates that, after Applicant denied having any debts more than 180 days old, the investigator then confronted him with the \$16,000 *credit card debt* owed to the credit union, and Applicant admitted its legitimacy. There is nothing in the record to suggest that Applicant had no actual knowledge of the credit card debt at the time he completed his SCA or at the time of his clearance interview. The Judge's findings on this matter are generally consistent with the interview summary.<sup>1</sup> See Government Exhibit 2, Interview Summary, at 8 and 12-13. The Judge's

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<sup>1</sup> Assuming without deciding that the interviewer confused the car loan with a debt owed to some other creditor, it did not exert any influence on the Judge's decision. He found in Applicant's favor regarding this debt both under Guideline F and Guideline E.

findings are based “upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1.

The balance of Applicant’s brief is a challenge to the Judge’s application of the mitigating conditions and the whole-person factors. We have considered Applicant’s arguments in light of the record as a whole and conclude that they consist, at most, of a mere disagreement with the Judge’s weighing of the evidence. Concerning the deliberate nature of Applicant’s omissions during his SCA and subsequent interview, we note that, during the hearing, Applicant was not able to provide a clear reason for his failures to disclose his delinquent debts. Tr. at 28. The Judge reasonably found this explanation to be lacking credibility, and we give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. Applicant has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020). We give due consideration to the Hearing Office cases that Applicant has cited, but each case must be decided on its own merits. The cited cases are not sufficient to undermine the Judge’s findings and conclusions. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019).

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