



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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 ARLINGTON, VIRGINIA 22203
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Date: June 6, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 20-03146
)	
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 December 11, 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 March 16, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

The SOR alleged that Applicant had 16 delinquent debts totaling about \$160,000. The Judge found against him on 11 of those debts totaling about \$145,000. Applicant, who is in his sixties, and his spouse operated a limited liability corporation (LLC) as partners for about 16 years. They used multiple credit cards to fund business operations. The business began experiencing financial problems in about 2012 and closed in 2018. "Applicant contended the debts were the responsibility of the LLC and not his personal responsibility. (Tr. 56) He did not provide the contracts used to obtain the credit or other documentation showing the LLC was responsible for the debts, or that he was not responsible for the debts. (Tr. 58-59)." Decision at 2.

Applicant took steps to resolve some LLC debts, others fell off his credit report due to the passage of time, and others remain in a charge-off status. At least one creditor sued the LLC, and Applicant settled and paid the debt without litigating the merits of his liability. A court document listed "[Applicant by name], et. al.," as defendants. Decision at 3. After a credit counseling service informed Applicant of state's three-year statute of limitations, he waited until the statute of limitations ran to improve his negotiating position with creditors, but they were not interested in settlements. Even though the 11 debts in question may be beyond the statute of limitations, they remain relevant for evaluating security clearance eligibility.

Applicant is current on his other financial obligations. Over the past five years, he had adequate financial resources to resolve the 11 debts. His net worth is about \$2.5 million, and he estimated his 2021 income after taxes to be about \$250,000. There is no evidence the 11 debts are being resolved. He presented insufficient evidence to mitigate the alleged security concerns.

Discussion

In his appeal brief, Applicant again argues that he is not personally responsible for the 11 debts at issue, contending they are the responsibility of the LLC. He asserts that there is no evidence that he personally guaranteed these debts, that "[a] credit report is not substantial evidence that [Applicant] is personally liable for a debt[.]" and that the Government has not met its burden of proving that Applicant was personally responsible for these debts. Appeal Brief at 18. He also contends the Judge based his decision on Appeal Board precedent that is distinguishable from his case because those cases dealt with applicants who were personally responsible for alleged debts. These arguments are not persuasive.

In the decision, the Judge correctly cited ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) for the proposition:

It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply. [Decision at 6.]

In this case, Government Exhibits (GE) 2, a three-in-one credit report from March 2020, lists the 11 delinquent debts at issue. Some of those debts are listed in later credit reports in the record. The credit reports in the record are sufficient to establish by substantial evidence that Applicant was personally responsible for these debts. Once the debts were proven, Applicant had the burden of presenting evidence to refute, explain, extenuate, or mitigate the security concerns arising from those debts. Directive ¶ E3.1.15. Put differently, Applicant had the burden of establishing that he had no personal responsibility for the debts. It also merits noting that the Board has previously stated that business-related debts can have a bearing upon the judgement and reliability of company officials who incurred them. *See, e.g.*, DISCR Case No. 93-1096 at 4 (App. Bd. Mar. 7, 1995), ISCR Case No. 14-01231 at 4 (App. Bd. Feb. 10, 2015), and ISCR Case No. ISCR Case No. 12-10335 at 5 (App. Bd. Dec. 29, 2017). From our review of the record, we find no error in the Judge’s determination that Applicant failed to meet his burden of production on this issue.

Applicant notes the Judge concluded Disqualifying Conditions 19(b), “unwillingness to satisfy debts regardless of the ability to do so;” and 19(c), “a history of not meeting financial obligation;” applied in this case. *See* Directive, Encl. 2, App. A ¶¶ 19(b) and 19(c). Applicant points out the Judge later noted in the decision that Disqualifying Conditions “19(a) and 19(c)” were established without explaining why the former disqualifying condition applied.¹ Decision at 6. The Judge’s reference to Disqualifying Condition 19(a) appears to have been a harmless typographical error that had no bearing on the outcome of the case.

Applicant further argues the Judge failed to consider all of the evidence, mis-weighed the evidence, and erred in his analysis of the mitigating conditions and whole-person factors. He contends, for example, that the debts at issue occurred due to circumstances beyond his control and that he acted reasonably under the circumstances, *e.g.*, following the advice of the credit counseling service on how to handle the debts; that he adequately disputed the debts by providing evidence to substantiate he took action to resolve the debts; and that he is financially stable and not a security risk. None of his 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. 21-01169 at 5 (App. Bd. May 13, 2022).

Applicant 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 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.”

¹ Directive, Encl. 2, App. A ¶ 19(a), “inability to satisfy debts[.]”

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