



**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759**

Date: June 29, 2022

| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 21-00019 |
| |) | |
| 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 February 20, 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 hearing. On March 25, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found in favor of Applicant on the Guideline E allegations and on one Guideline F allegation. Those favorable findings were not challenged on appeal. The Judge found against Applicant on five delinquent debt allegations. In his findings of fact, the Judge noted two of those allegations (SOR ¶¶ 1.d and 1.e) involved the same debt. The four debts at issue total about \$32,000. 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

Applicant, who is in his early forties, has two children and two step-children. He was unemployed for about a year between 2009 and 2010 and for about four months between 2016 and 2017. He has held a security clearance since 2007. He took his children on trips outside the United States in 2011, 2017, and in either 2018 or 2019. The latter trip cost about \$1,500.

SOR ¶ 1.b. This debt is for a car loan that Applicant opened in 2017. The car was totaled in an accident. The loan became delinquent in 2019. Applicant had "GAP" insurance on the car and is negotiating with the insurance company on the amount he has to pay under the policy. He testified he entered into a formal payment agreement with the creditor in February 2021. He provided no documentation of that agreement. His intent to repay the debt was thwarted by marital plans and other obligations, including the Christmas holidays. In a post-hearing submission, Applicant provided a document showing the account was closed in 2019 with a zero balance, but it does not show how the account was resolved.

SOR ¶ 1.c. This account is for a line of credit that was opened in Applicant's name in 2015 and became delinquent in 2016. He claimed this account was the result of identity theft. He disputed the debt with a credit service but testified that he was still making payments towards it. The debt was closed in 2016 with a zero balance. "The unanswered question is how did the account close [in] 2016, with a zero balance, but he was still making payments on the account in 2021." Decision at 4.

SOR ¶¶ 1.d and 1.e. Both of these accounts are for the same auto loan that was opened in 2016 and became delinquent in 2017. Applicant owes this debt, but he filed a dispute when the creditor refused to fix the car while it was under warranty. He fixed the vehicle with his own money, and it broke down again. He asked the creditor to repossess it because it was a lemon. In February 2021, Applicant entered into a repayment agreement, but has missed payments. He testified that he refused to make payments because he was treated unfairly. He presented documentation indicating he disputed the debt because it was opened fraudulently. The creditor's investigation verified the debt was accurate.

SOR ¶ 1.f. This debt was for dental services received in 2015 and became delinquent in 2020. Applicant recalled this involved services that were not completed because there was a problem with his insurance. Another dentist completed the service. He was informed the statute of limitations could apply to this debt. He paid about \$600 on this debt in 2021 and agreed to make regular electronic payments to the creditor.

Besides the alleged debts, Applicant has incurred no new debt. His financial problems are attributable to his unemployment. He has talked to a credit union advisor and financial counselor. He has the reputation of being a diligent and trustworthy employee.

The Judge's Analysis

"The delinquencies and Applicant's confusing and conflicting explanations about their status continue to cast doubt on his current reliability, trustworthiness, and judgement." Decision

at 8. Except for a three-month period between 2016 and 2017, he has been continually employed during the past 11 years. Instead of making good-faith efforts to pay the debts, he relied on the statute of limitations to resolve four of them. He did not present sufficient evidence to show he had a legitimate basis to dispute any of the debts. His testimony regarding the debts undermines his credibility. Overall, Applicant presented no meaningful evidence that most of his financial problems are being resolved or are under control.

Discussion

In his brief, Applicant contends the Judge erred in concluding there was no indication Applicant participated in a premarital counseling session given by a minister that addressed financial counseling. The minister's letter, however, states, "[Applicant] was receptive to the information. He was advised to monitor his spending over time to see what was being spent and where (ex. cash flow and misc. spending), what was owed and needed to be paid off" Applicant's Exhibit K. Applicant also testified that he participated in marriage counseling that included financial counseling. Tr. at 86. Even though the Judge may have erred in reaching that conclusion, it was a harmless error because it did not likely affect the outcome of the case. *See e.g.*, ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020).

In his Guideline F analysis, the Judge concluded that Disqualifying Conditions 19(a), *inability to satisfy debt*, and 19(c), *a history of not meeting financial obligations*, applied in this case. Directive, Encl. 2, App. A ¶¶ 19(a) and 19(c). On appeal, Applicant argues he "never had an inability to satisfy any debt." Appeal Brief at 11. Interestingly, he also asserts on the same page of his brief that his debts "resulted from peculiar circumstances following a period of underemployment and unemployment." *Id.* In testifying about his periods of unemployment in 2009 and 2016, Applicant stated:

When you stop working you have to literally rely off of your unemployment. So I was only making enough to pay some of my current bills. I was also getting help from my mother on paying some of my bills. But some of them fell to the wayside and it was actually on one of my credit report (sic) during those times. [Tr. 27]

The Judge committed no error in concluding Disqualifying Condition 19(a) applied. Substantial evidence in the record supports that conclusion.

The balance of Applicant's arguments amount to disagreement with the Judge's weighing of the evidence. He argues, for example, the Judge did not consider all of the evidence, misapplied the mitigating conditions, misweighed the evidence, and erred in his whole-person assessment. 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. 20-00290 at 4 (App. Bd. Feb. 16, 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.”

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