



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 6, 2022

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 In the matter of:)
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 Applicant for Security Clearance)
 _____)

ISCR Case No. 21-00261

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 June 18, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On February 22, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Benjamin R. Dorsey 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 he was denied due process and whether the Judge failed to consider and weigh the evidence properly, resulting in a decision that was arbitrary, capricious, or contrary to law. For reasons stated below, we affirm the Judge’s decision.

The SOR alleged that Applicant had 11 delinquent debts totaling about \$18,000. These included debts for unpaid rent, personal loans, and utilities. The Judge concluded that Applicant resolved two of the alleged debts and found in favor of him on those debts. The Judge found

against him on the remaining debts, concluding no documentation was presented to show they were paid or otherwise favorably resolved. Some of those unresolved debts no longer appear on his most recent credit reports. In general, the Judge concluded Applicant presented insufficient evidence to mitigate the alleged security concerns.

Due Process Issue

Applicant claims he was denied due process because he was not provided “clear concise information required to dispute the Statement of Reasons in the file of relevant material (FORM).” Appeal Brief at 1. He further contends that he was not informed his most recent credit reports submitted with his SOR Response would be insufficient to mitigate the alleged security concerns. These arguments lack merit. The Judge and Department Counsel have no obligation to provide an applicant guidance on how to rebut or mitigate SOR allegations. In fact, DOHA personnel are not authorized to advise applicants on how to present their cases. *See, e.g.*, ISCR Case No. 12-02329 at 3 (App. Bd. Aug. 17, 2015).

Of note, Applicant was provided a copy of the Directive when he received the SOR. Paragraph E3.1.15 of the Directive provides that an applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. In this case, Applicant admitted some of the SOR allegations and Department Counsel presented substantial evidence to prove other allegations. In the FORM, Department Counsel stated Applicant had the burden of presenting evidence to overcome the *prima facie* case against him and argued that Applicant failed to meet that burden, contending he presented insufficient mitigation in his SOR response. On November 3, 2021, Applicant was provided a complete copy of the FORM and was given 30-days from its receipt to submit additional information for the Judge’s consideration. Applicant did not submit a response to the FORM.

In essence, Applicant was notified of deficiencies in his SOR Response, was given an opportunity to submit additional evidence, and failed to do so. Applicant failed to establish that he was denied any due process afforded by the Directive.

Analysis of the Evidence

Applicant asserts the three credit reports submitted with his SOR Response show meaningful resolution of his financial problems. He claims “[c]redit reporting agencies do not remove a debt unless proof of resolution of a debt is provided, the owner of the debt reported the debt as paid in full, or the creditor fails [to] respond to disputed debts and provide factual evidence of current indebtedness of the applicant.” Appeal Brief at 1. We do not find this argument persuasive. Applicant cites no authority supporting his claim. The fact that a debt no longer appears on a credit report does not establish meaningful evidence as to the disposition of the debt. *See, e.g.*, ISCR Case No. 17-00683 at 2 (App. Bd. Oct. 19, 2018). Debts remain relevant for determining an individual’s security clearance eligibility even if they have been deleted from credit reports due to the passage of time. *See, e.g.*, ISCR Case No. 03-20327 at 6 (App. Bd. Oct. 26, 2006). As the Board has previously noted, there is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, and the absence of unsatisfied debts from an applicant’s credit report does not extenuate or mitigate an

overall history of financial difficulties or constitute evidence of financial reform or rehabilitation. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017). Additionally, even if a debt is resolved, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about security clearance worthiness. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015). It merits noting that the credit reports Applicant forwarded with his SOR Response reflect that he still has four longstanding, delinquent debts totaling over \$12,000, including a debt not alleged in the SOR. *See* ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017) for the proposition that non-alleged debts may be considered for certain purposes, such as determining whether an applicant has demonstrated rehabilitation and evaluating an applicant's case for extenuation or mitigation.

Applicant also argues that most of his financial problems occurred long ago, were infrequent, and happened under circumstance that are unlikely to recur. None of his arguments are enough to rebut the presumption that the Judge considered all of the evidence in the record or to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 21-00362 at 4 (App. Bd. May 4, 2022).

Request for a Remand

Applicant requests the Board remand the Judge's decision so that he may present additional evidence. It is well settled that absent a showing that an applicant was denied a reasonable opportunity to prepare for the proceeding below or was denied a reasonable opportunity to present evidence on his or her behalf, an applicant is not entitled to a remand just to have another chance to present his or her case. *Id.* at 5. If the Board were to grant Applicant's request for a remand or allow him to submit new evidence in this case, then the Board would be giving him special treatment and denying other, similarly-situated applicants of their right to receive the fair, impartial, and even-handed application of Executive Order 10865 and the Directive. *Id.*

Conclusion

Applicant failed to establish the Judge committed any harmful errors. 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