



**Judge's Findings of Fact:** The Judge's factual findings are summarized below, in pertinent part:

Applicant is 37 years old and married, with four children. He served on active duty for nine years and currently serves in the Reserve force. He has earned bachelor's and master's degrees. The SOR alleged Applicant has three charged-off debts that total \$44,471: ¶¶ SOR 1.a. (\$3,136), 1.b. (\$21,335), and 1.c. (\$20,000). In responding to the SOR, Applicant admitted in part, denied in part, and provided mitigation information.

From 2016 to 2022, Applicant and his wife had a gross annual income that averaged from \$250,000 to \$300,000. Several years ago, Applicant incurred \$42,000 in medical and legal expenses in adopting a child. Applicant's current annual salary is \$135,000, he has an additional annual income of about \$20,000, and his wife's annual salary is \$155,000. Applicant has substantial funds in savings and estimated his net worth to be about \$650,000.

In 2014, Applicant purchased a home for \$189,000. Between 2014 and 2015, he spent about \$180,000 to expand the house from 1,400 square feet to 3,500 square feet. He contracted with a construction company (CC) to renovate the residence for about \$119,400. He had \$80,000 cash, and he borrowed the remainder on credit cards.

Applicant made the final payment to CC before the work was completed, and CC left without completing the job. Applicant was unable to recover the funds paid to CC, as the business closed. Applicant acknowledged that he made a poor decision to pay the company prior to completion of the job. He subsequently paid other construction firms \$57,000 to complete the construction.

Applicant attempted unsuccessfully to have his insurance company pay for completion of construction or to recover the funds paid to CC. Applicant was unsure about why he chose not to sue CC, but cited as possible reasons an inability to collect from CC and a reluctance to pursue litigation without reasonable hope of recovery. In 2021, Applicant sold the house and made a profit of \$130,000.

In October 2015, Applicant hired a debt reduction company (DRC) to help resolve five delinquent debts, including the three alleged in the SOR.

In 2015, the creditor in SOR ¶ 1.c issued an IRS Form 1099-C canceling the debt owed by Applicant in the amount of about \$18,000. Applicant declared the amount as income on his federal income tax return.<sup>1</sup>

The debt in SOR ¶ 1.a. originated from a retail chain's charge card and the debt in SOR ¶ 1.b. originated from a financial institution's credit card. DRC wrote the creditors for both debts, but stated that the creditors did not respond, that the statute of limitations has now expired, and that the creditors cannot legally collect the debts. DRC advised Applicant not to pay the two creditors. Applicant did not provide the correspondence sent by DRC to the two creditors and did not indicate that DRC ever offered a specific settlement amount to either creditor. He did not

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<sup>1</sup> The Judge resolved this allegation (SOR ¶ 1.c.) in favor of the Applicant.

receive an IRS Form 1099-C from either creditor. He had the funds available to pay the SOR ¶ 1.b debt in full if he chose to do so.

Applicant submitted a Feb 2022 credit report that does not reflect either the SOR ¶ 1.a. or SOR ¶ 1.b. debt. His December 2021 credit report reflects the SOR ¶ 1.b. debt, but not the SOR ¶ 1.a. debt.

Applicant said the three-year statute of limitations barred collection of the debts in SOR ¶¶ 1.a and 1.b., and he believed the debt was “no longer valid” (internal citation omitted). The statute of limitations for a credit card debt in the state where his residence was located in 2015 and 2016 is five years. Applicant did not indicate the state with the three-year statute of limitations or provide information about why that state would have jurisdiction over his debts. [Decision at 4.]

Applicant wanted DRC to convince his creditors to seek repayment from CC rather than from him. When the creditors elected not to do so, Applicant elected not to repay the creditors in SOR ¶¶ 1.a. and 1.b.

Two non-SOR creditors responded to DRC’s request for information, and DRC settled both debts on Applicant’s behalf. One non-SOR creditor obtained a judgment against Applicant for approximately \$9,800, which he satisfied with monthly payments. Aside from the two debts alleged in SOR ¶¶ 1.a., and 1.b., Applicant has excellent credit.

**Judge’s Analysis:** The Judge’s analysis is summarized and quoted below, in pertinent part:

Applicant described two circumstances beyond his control that adversely affected his finances. First, he and his spouse adopted a child and spent \$42,000 in medical and legal expenses. Second, he was the victim of an unscrupulous construction company when his home was under construction, which cost about \$57,000 to remedy. However, Applicant did not act in a reasonable manner in dealing with these circumstances. He did not file a lawsuit against CC. Having failed to establish privity between CC and the creditors, his dispute with CC did not provide a reasonable basis for him not to pay his debts owed to the creditors in SOR 1.a. and 1.b.

Applicant did not provide documentary evidence that he maintained contact with the two creditors, did not provide the letters that DRC sent to the creditors, and did not provide any evidence of any payments or settlement offers sent to these two creditors after 2015.

The two debts in issue do not appear on his February 2022 credit report. However, that is not meaningful evidence of debt resolution, as there are multiple reasons why debts are dropped from credit reports. Federal law requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations.

DRC provided reasonable financial advice to Applicant about state statutes of limitation, which range from 2 to 15 years. Although DRC said that the state statute of limitations was three years, it was five years. Once Applicant stopped making payments, the creditor had to file suit within the statute of limitations to maintain the collectability of their debt. There is no evidence that the creditors in issue took judicial action to pursue collection of these two debts. However, assuming Applicant's debts are collection barred, they are still relevant to the adjudication of Applicant's security clearance. Even if a delinquent debt is legally unenforceable under state law, the Federal Government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to pay it in a timely manner.

Applicant had ample financial resources over the last five years to resolve the debts in SOR ¶¶ 1.a and 1.b. There is no clear evidence that these two debts are being resolved. I have assumed that Applicant could not be held financially responsible for the debts in SOR ¶¶ 1.a. and 1.b because of the statute of limitations. However, he did not provide sufficient documentation about why he was unable to make greater documented progress resolving these two debts.

. . .

[H]e did not provide a persuasive reason why he did not make specific and reasonable offers to settle the two debts. His lack of responsible financial action in regard to the debts in SOR ¶¶ 1.a and 1.b over the last seven years raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. Decision at 10–11.

## **Discussion**

Applicant alleges that the Judge erred in two findings. First, he challenges the Judge's determination that the statute of limitations in his state of residence is five years, re-asserts that it is three, and alleges that this error contributed to the Judge's "fundamental misunderstanding of the legal actions taken with advice from lawyers . . ." Appeal Brief at 1. The Appeal Board declines to adjudicate the controlling statute of limitations on the debts in issue. As the Judge explicitly stated, he assumed for purposes of the decision that the debts were in fact barred by the statute of limitations, regardless of whether it was a three-year or five-year rule. We are not persuaded by Applicant's argument that the confusion over the controlling statute of limitations could have in any way affected the Judge's assessment of mitigating factors or his whole person analysis.

Second, Applicant asserts that the Judge erred in characterizing the law firm that he retained as a "debt reduction company" and that this label reflects a bias on the Judge's part.

This is another fundamental error in Judge Harvey's assessment of the situation and suggests a prior opinion on debt resolution that affected his overall ability to review and understand the actions taken. [The law firm] is a consumer litigation law firm with experienced licensed attorneys familiar with the process of settling debts. Judge Harvey clearly reviewed the case under the false

understanding that we were trying to avoid paying our debts. To the contrary, we were taking specific efforts, under legal counsel, to work with our creditors in order to pay the debts. This definition of [the law firm] as a “DRC” was presented not by the government’s representative, but by the Judge himself showing an extreme bias . . . . Facts were presented on the efforts to work with the creditors to satisfy the debts but those were outright ignored because of Judge Harvey erroneously inserted the label of “DRC” making evaluation of my judgement and intent predetermined despite evidence presented. [Appeal Brief at 2.]

Turning first to the question of whether the Judge mischaracterized the firm that Applicant retained, we conclude that he did not. Applicant testified to the various services that the law firm provided to him, which included challenging the validity of debts, negotiating settlements, and providing advice on the enforceability of the debts. Those services fall squarely within the generic understanding of the services provided by a debt relief or debt reduction company.<sup>2</sup> The Judge committed no error, much less “fundamental error,” in referring to the law firm with this generic descriptor.

Turning next to the question of bias—there is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020). The standard is not whether Applicant personally believes the Judge was biased against him, but rather whether the record contains any indication that the Judge acted in a manner that would lead a reasonable, disinterested person to question his fairness and impartiality. *See, e.g.*, ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022). There is nothing in the record or in the Judge’s decision that would likely persuade a reasonable person that he lacked the requisite impartiality. Applicant has failed to carry his heavy burden of persuasion on this issue.

Finally, Applicant asserts that his debts are mitigated by the passage of time, as the statute of limitations has run and the debts are “not enforceable, therefore no security risk exists . . . .” Appeal Brief at 4. In his decision, the Judge thoroughly explored the reasons why the statute of limitations may bar recovery of the debt but does not bar a Judge from considering the underlying circumstances of an applicant’s financial difficulties and his response. The Judge’s analysis and conclusions are firmly grounded in the extensive appeal board precedent to which he cites. It is well established that the scope of Guideline F encompasses not only an Applicant’s current financial situation, but also extends to his or her financial history. A Judge may consider debts that are resolved, dropped from a credit report, or barred by the statute of limitations for what they may reveal about an applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017). Applicant’s brief discloses no reason to disturb the Judge’s conclusion that the evidence raises security concerns under Guideline F.

Applicant has failed to establish the Judge committed any harmful error. None of Applicant’s arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01495 at 3 (App. Bd. Sep.

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<sup>2</sup> *See, e.g.*, <https://www.consumerfinance.gov/ask-cfpb/what-are-debt-settlementdebt-relief-services-and-should-i-use-them-en-1457/>.

30, 2020). 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