

the three remaining consumer debts (SOR ¶¶ 1.c – 1.e). On appeal, the Applicant raised the following issue: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. For the reasons stated below, we remand the decision.

The Judge’s Findings of Fact

Applicant is in her mid-forties and has earned two associate’s degrees. Now divorced, Applicant was married from 2003 to 2020 and has seven children. She retired from the U.S. military in 2015 after a 21-year career.

Upon retirement in 2015, Applicant and her then-husband (husband) opened a commercial cleaning business. Although the business was initially successful, it floundered after one of their largest clients, the prime contractor on a military housing contract, failed to make timely payments and then stopped making payments altogether. Applicant and her husband struggled to pay their employees and business expenses. Gradually, they fell behind on federal payroll taxes, state employment taxes, and their personal debts. Prior to the failure of their business, Applicant had no financial problems.

In 2018, Applicant and her husband filed for Chapter 13 bankruptcy protection, listing approximately \$87,000 of debts. As part of the bankruptcy proceeding, Applicant’s house was sold at foreclosure.

The couple’s financial problems caused stress in their marriage, and Applicant filed for divorce in February 2020. The couple agreed to split the Chapter 13 bankruptcy payments, but Applicant’s husband failed to make his share of the payments, leading to the dismissal of the bankruptcy plan, as alleged in the SOR.

The three delinquent consumer debts alleged at SOR ¶¶ 1.c – 1.e are owed to the same creditor. Applicant testified that two of the debts represent the same car loan. Subparagraphs 1.d and 1.e are both auto loans opened on the same day with the same account number. “I conclude that Applicant’s contention . . . is substantiated.” Decision at 3. Additionally, Applicant contends that the three debts were her ex-husband’s responsibility and that she was merely an authorized user on the accounts. She submitted a credit report that indicates her responsibility to pay them was terminated. Applicant referenced a divorce agreement that designated her husband as responsible for the debts, but she did not provide a copy of the agreement.

The debt alleged in SOR ¶ 1.g, totaling \$45,000, represent delinquent Federal payroll taxes related to the failure of Applicant’s business. Between 2016 and 2020, the IRS diverted approximately \$17,000 of refunds due from Applicant’s personal income tax to her business delinquency. Applicant made two modest payments in 2021. When she contacted the IRS to arrange a payment plan, the IRS rejected the request and placed the account in a non-collectible status after concluding that she did not have the disposable income to execute a payment plan at this time.

The Judge’s Analysis: The Judge’s analysis is quoted in pertinent part below:

Applicant’s inability to pay her debts on time was not caused by foolish or profligate spending. Instead it stemmed from the failure of her business and her subsequent divorce. In early 2021, a few months after her divorce was finalized, Applicant began attempting to contact creditors . . . These efforts are sufficient to mitigate subparagraphs 1.b and 1.f and to trigger the application of [two mitigating conditions]. I resolve subparagraphs 1.b and 1.f in Applicant’s favor.

Applicant successfully established that two of the three debts alleged in subparagraphs 1.c through 1.e were duplicates. However, her contention that she was not responsible for their payment because her ex-husband was legally responsible to pay them, per a separation agreement, was unsubstantiated absent record evidence of such an agreement.

. . .

She has gotten off to a good start in satisfying her debts . . . However, the most significant debt, owed to the IRS, remains outstanding, and per an IRS agent, she does not currently have the means to initiate a viable payment plan. Consequently, although Applicant deserves credit for the steps she has made thus far to satisfy her delinquent debts, there is not yet a significant enough track record of financial reform to conclude that she has mitigated the financial considerations security concerns. [Decision at 6.]

Discussion

Applicant challenges the Judge’s conclusions as arbitrary, capricious, and contrary to the law. In deciding whether the Judge’s rulings or conclusions are erroneous, we review the Judge’s decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.,* ISCR Case No. 14-02563 at 4 (App. Bd. Aug. 28, 2015).

Turning first to the three consumer debts alleged at SOR ¶¶ 1.c – 1.e, Applicant challenges the Judge’s conclusions in two regards. First, she highlights that one of the duplicate car loans should have been resolved favorably for her. We agree. As we have previously stated, when the SOR alleges the same delinquent debt twice, as the Judge determined here, the Judge should find in favor of Applicant on at least one of those allegations. *See, e.g.,* ISCR Case No. 17-01371 at 3 (App. Bd. Nov. 16, 2018).

Additionally, Applicant argues that she mitigated the debts owed to this creditor by submission of a credit report that indicates that her responsibility for the debts to this creditor was terminated. Again, we agree. The Government submitted four credit reports: two pre-date the SOR (March 2020 and December 2020) and two post-date the SOR (September 2021 and April 2022). The earlier two establish the debts owed at SOR ¶¶ 1.c–1.e, debts owed to the same creditor on joint credit card and auto loan accounts. The two credit reports that post-date the SOR, however, indicate that Applicant was “Terminated” as an “Account Owner.” GE 6 at 3–5; GE 7 at 6, 8. For all three accounts, the credit reports reflect balances of \$0. *Id.* This is not a case in which the debts fell off a credit report or are barred by a statute of limitations. The Government’s own exhibits affirmatively establish that—sometime between the credit report of December 2020 and that of September 2021—Applicant’s responsibility for the debts was terminated. Assuming *arguendo* that the Government established its prima facie case with regard to these debts, the debts are mitigated by evidence confirming that Applicant is no longer responsible for them.

The Judge’s remaining adverse formal findings involve the Chapter 13 bankruptcy dismissal in June 2020 and the delinquent business tax debt owed to the Federal Government. In his analysis, the Judge concluded that Applicant’s financial problems were the result of conditions beyond her control, *i.e.*, the DoD prime contractor’s failure to pay the company owned by Applicant and her ex-husband for services rendered and her ex-husband’s failure to pay his share of the Chapter 13 bankruptcy payments. Those circumstances resulted in the failure of the couple’s business, the business tax deficiency, marital strife and the couple’s divorce in late 2020, and the Chapter 13 bankruptcy dismissal. In the decision, the Judge found “Applicant had no financial problems before the business failed.” Decision at 3. He also highlighted her efforts to resolve other debts. In this regard, we note that, with the exception of the debt alleged in SOR¶ 1.b for which the Judge found in Applicant’s favor, her most recent credit report from April 2022 reflects no other delinquent debts. GE 7. It also merits noting that the IRS was listed as a creditor in the Chapter 13 bankruptcy petition, and the couple’s home was sold in foreclosure as part of that proceeding. GE 3 at 46; Decision at 3. Following dismissal of the bankruptcy, Applicant made two payments totaling \$390 towards the tax debt in 2021. AE G. At some point, Applicant contacted the IRS to establish a repayment plan. “Her request was rejected, and the account was placed in non-collection status because the IRS agent concluded that she did not have enough disposable income to execute a payment plan at this time.” Decision at 4, citing Tr. at 48.

In his analysis, the Judge concluded that Mitigating Condition 20(g)¹ did not apply to the tax debt because Applicant had no repayment plan for it. As quoted above, the Judge also noted the IRS debt remained outstanding and concluded that, “although Applicant deserves credit for the steps she made thus far to satisfy her delinquent debts, there is not yet a significant enough track record of financial reform to conclude that she has mitigated the financial considerations security concerns.” Decision at 6. Based on our review of the record, the Judge’s emphasis on a lack of

¹ See Directive, Encl. 2, App. A ¶ 20(g), “the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.”

a track record of payments is misplaced. Given that Applicant's financial problems arose from circumstances beyond her control and the IRS concluded she does not have the means to execute a repayment plan, the key issue is whether she acted responsibly under the circumstances and, if so, whether the remaining security concerns are mitigated under Mitigating Condition 20(b).² The Judge has not explained what he believes that Applicant could or should have done under the circumstances that she has not already done to resolve either the Chapter 13 bankruptcy dismissal or the business tax debt, or explain why the approach she has taken is not "responsible" in light of the circumstances presented in this case. *See, e.g.*, ISCR Case No. 08-06567 at 3-4 (App. Bd. Oct. 29, 2009). Put differently, the Judge has not stated a satisfactory explanation for his conclusion that these allegations remain unmitigated under Mitigating Condition 20(b).

Based on the foregoing, we conclude that the best resolution of this case is to remand the case to the Judge to correct the identified errors. Upon remand, a Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board retains no jurisdiction over a remanded decision. However, the Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.130. Other issues in the case are not ripe for consideration at this time.

² *See* Directive, Encl. 2, App. A ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]"

Order

The Decision is REMANDED.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board