

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: October 19, 2022
In the matter of:)	
)))	ISCR Case No. 20-03234
Applicant for Security Clearance)))	

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 February 25, 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 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 29, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had five delinquent debts totaling about \$41,000. In responding to the SOR, Applicant admitted the allegations with explanations. The Judge found in favor of Applicant on the four smaller debts and against him on the remaining debt of over \$38,000. The Judge stated that Applicant was financially irresponsible for a number of years, noted he waited until after the hearing to do anything about his financial issues, and concluded he submitted insufficient evidence to mitigate the security concerns arising from the largest debt.

In his brief, Applicant contends the Government submitted an outdated credit report (Government Exhibit (GE) 2) into evidence. This contention establishes no error. We note the Government also submitted three more recent credit reports, and Applicant submitted one from June 2022. In examining alleged financial delinquencies, a Judge may consider an applicant's financial history. *See*, *e.g.*, Directive, Encl. 2, App. ¶ 19(c). Applicant further asserts that his most recent credit report does not reflect any delinquent debts. This assertion is not persuasive. As the Board previously noted, there is more than one plausible explanation for the absence of debts from a credit report, such as their removal due to the passage of time, and the absence of unresolved debts from an applicant's credit report does not establish meaningful evidence as to the disposition of those debts or constitute evidence of financial reform or rehabilitation. *See*, *e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

Furthermore, Applicant's brief does not contend the remaining debt was resolved, but rather states he established a repayment plan for it. In this regard, he claims he did not submit evidence regarding the first payment on that plan because it did not appear on his bank statement until after the hearing closed. This claim, however, constitutes new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

Applicant argues the Judge did not consider Mitigating Conditions 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 reasonably under the circumstances;" and 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts[.]" In his argument, Applicant contends the challenges of raising a family caused him to lose track of his bills and indicated he plans to pay all of them. None of his arguments are sufficient to demonstrate that the Judge analyzed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Applicant failed to establish that the Judge committed any harmful error. 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: Jennifer I. Goldstein Jennifer I. Goldstein Administrative Judge Member, Appeal Board

Signed: Moira D. Modzelewski Moira D. Modzelewski Administrative Judge Member, Appeal Board