



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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 ARLINGTON, VIRGINIA 22203
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Date: October 31, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 21-01236
)	
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 September 3, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 18, 2022, after consideration of the record, 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 SOR alleged nine delinquent debts. The Judge found favorably for Applicant on one and adversely on the other eight, which total about \$53,000. Applicant raises 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 and Analysis

Applicant is in his forties. Divorced in 2016, Applicant has two children. He has been continuously employed from 2007 to the present. Applicant attributes his debts to several factors: his divorce, providing financial assistance to family members, and taking care of his parents after they fell ill. Applicant asserted that financial advisors recommended that he focus on paying current debts and allow his old debts to be charged off.

In his June 2020 clearance interview, Applicant explained that he and his ex-spouse agreed during their divorce proceedings to pay off some of their bills. He stated that he paid off some debts but was waiting for the statute of limitations (SOL) to run on others. Applicant also expressed his intent to write creditors and work out repayment plans. He is current on all present bills.

At the time of his security clearance interview, Applicant had approximately \$4,500 in discretionary income every month after subtracting monthly expenses from net earnings. Applicant did not provide documents to establish how much financial support he provided for his parents or family members. At his interview, he was afforded an opportunity to provide additional documents related to the delinquent debts but declined to do so.

Following his 2016 divorce, Applicant accrued about \$53,000 in delinquent debt between 2017 and 2020. There is some evidence that events beyond his control—to include his divorce, his parents' illness, and his assistance to other family members—caused the indebtedness. However, in the absence of documentation of these events, it is impossible to speculate as to their financial impact.

The reason why his debts are not being resolved or under control is due to his reliance on advice of financial advisors, persuading him to wait for the pertinent statute of limitations to run out so that the delinquent debts would no longer be enforceable. Under DOHA security clearance law, that decision to rely on the tolling of the statute rather than pay his debts, does not demonstrate a good-faith effort to pay off his debt obligations. [Decision at 7.]

Discussion

In his brief, Applicant states, "He was advised by security personnel that a decision on the written record would provide a faster result." Appeal Brief at 4. He cites to no evidence in the record that corroborates that statement. To the extent that he is contending the purported statement by unidentified security personnel may have misled him in making a forum choice, he has failed to establish a *prima facie* case of a due process violation.

Applicant has not challenged any of the Judge's specific findings of fact. To the extent that we understand Applicant's argument, it is that the Judge failed to consider the actions he has taken to rectify his debts, which included retaining a credit repair firm and following their advice to "[wait] for the debts to fall off his credit report." Appeal Brief at 6. Applicant notes that the Appeal Board has stated that reliance on a SOL is not a good-faith effort within the meaning of

Adjudicative Guideline (AG) ¶ 20(d),¹ but he argues that the Judge erred in that he applied this precedent too broadly and failed to consider whether this same conduct might in fact be mitigating under other subparagraphs.² For example, “Applicant followed the advice of a financial professional to wait until his debts were charged-off which shows applicability under [AG ¶ 20(c)].”³ Appeal Brief at 7.

The Board is not persuaded. Putting aside whether the advice not to pay the debts came from “a legitimate and credible source” within the meaning of the Guidelines, AG ¶ 20(c) requires “clear indications that the problem is being resolved or is under control,” and there are no such indications here. *See, e.g.*, ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008). We conclude this assignment of error lacks merit. None of Applicant’s 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. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

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.”

¹ AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

² Applicant cites to an outdated version of the adjudicative guidelines and errs by citing to the wrong subparagraphs of that version. We will interpret his argument under the current guidelines and in the context provided in his brief.

³ AG ¶ 20 (c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.

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