

Date: November 1, 2022

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In the matter of: )	
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----- )	ISCR Case No. 19-03640
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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 August 19, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 22, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 the Judge failed to consider, and/or mis-weighed, significant record evidence, resulting in a decision that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

## **The Judge's Findings of Fact and Analysis**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant has been working for a DoD contractor since 2015 and has held a clearance during that time. A military retiree, he has attended college but does not have a degree. Twice divorced, he has two married children who do not live with him.

Applicant's SOR lists six delinquent debts, *i.e.*, a deficiency judgment following the foreclosure sale of a house, credit card debts, utility bills, and a collection account. The Judge found against Applicant for the three credit card debts of a total amount of about \$17,000 and entered favorable findings regarding the others. Applicant attributed his financial problems to various circumstances, such as unemployment, a tenant's failure to pay rent, support for relatives, a cohabitant's medical problems, and two divorces, one of which entailed child support obligations. Applicant has approximately \$20,000 in bank accounts, enough to pay his credit cards off. However, he explained that if he did so, yet lost his clearance anyway, he would be in worse financial shape than he already is. He stated that this was the basis of his decision "to retain the funds [he] had accumulated to avoid the . . . possibility that [he] would be unable to financially support [himself] after possible termination of [his] employment[.]" Decision at 5; Applicant Exhibit V at 14, but the Judge incorrectly cited as 13.

Applicant has received no formal financial counseling, though he has received ad hoc advice over the years. Applicant enjoys an excellent reputation for honesty, trustworthiness, and professionalism. During his military career, he deployed 11 times and received numerous decorations. Applicant cited to his difficulties with anxiety and depression, which he believes resulted from his military experience.

The Judge noted the several things beyond Applicant's control that affected his financial condition. However, he concluded that Applicant had not demonstrated responsible action with regard to his credit card debts. He stated that Applicant failed to show that he had maintained contact with the creditors or that he had offered to pay or settle these debts, despite a stable income and the apparent ability to resolve them. The Judge noted favorable evidence that Applicant provided, such as his military service and his laudatory character references. However, he ultimately concluded that Applicant had failed to present a persuasive explanation for his failure to have resolved the debts found against him.

## **Discussion**

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He states that, while he believes that the Judge "applied his best understanding" of the mitigating conditions, he failed properly to understand Applicant's position and arguments. Appeal Brief at 1. He cites to a significant amount of evidence that he believes the Judge did not consider or that he failed properly to weigh, such as (1) the circumstances surrounding his effort to resolve the mortgage debt that was found in his favor; (2) the length of time involved in the processing of his application for a clearance; (3) his reasons for not paying off the credit card debts; (4) the various circumstances underlying his financial problems; and (5) favorable evidence such as his work history and professional attainments.

On the first point, he argues that he delayed paying off his other debts in order to have enough money to satisfy the substantial deficiency judgment alleged in the SOR, although the VA ultimately absolved him of that obligation. *See* AE S, Letter from Veterans Administration. We find no reason to believe that the Judge failed to consider or that he mis-weighted this evidence, especially insofar as he resolved the mortgage deficiency in Applicant's favor. That he did not draw from this evidence the implication that Applicant urges in his brief does not undermine the Judge's decision. Concerning the length of time it has taken to process Applicant's case, we have no jurisdiction to rule on the manner in which officials conduct clearance investigations. *See, e.g.*, ISCR Case No. 17-04070 at 3 (App. Bd. Mar. 18, 2019). In any event, Applicant has not shown that the time involved in adjudicating his clearance application impaired his ability to present his case for mitigation. Regarding his ultimate reasons for not paying off his credit cards, the Judge made extensive findings drawn from Applicant's evidence, and he addressed these findings in his analysis. After considering the totality of Applicant's arguments, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record or that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020).

Applicant presents arguments regarding SOR allegations about utility bills and internet services. The Judge resolved these allegations in Applicant's favor; accordingly, there is no reason for us to address these arguments. Applicant challenges some of the Judge's findings of fact. For example, he notes that the Judge found that he had held a clearance for at least 7 years. In reality, Applicant presented evidence that he has held a clearance for around 25 years, which includes his active duty military career. *See* AE J at 17. The challenged finding is therefore erroneous, although, even if he had found as Applicant argues, the Judge would probably have rendered the same ultimate decision in this case. Therefore, this error is harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). After reviewing the record, we conclude that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *Id.* Applicant states that other persons similarly situated had "been placed under a monitored state as a stipulation of their clearance being upheld" and requests such a procedure for himself. Appeal Brief at 5. Applicant's arguments and the record evidence do not support application of any of the possible waivers to policy set forth in Directive, Encl. 2, App. C. *See, e.g.*, ISCR Case No. 19-01084 at 2 (App. Bd. Aug. 26, 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: Jennifer I. Goldstein

Jennifer I. Goldstein  
Administrative Judge  
Member, Appeal Board