



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

Applicant's business failed in 2015 or 2016, causing the eight defaults on credit cards and a loan that are alleged in the SOR. His marriage failed at the same time. Applicant filed for divorce and assumed custody of his two minor children. In his mid-fifties at the time, Applicant experienced a period of unemployment or underemployment before beginning work in July 2018 as a linguist for a U.S. Government contractor. Applicant submitted letters and a certificate of appreciation that attest to his performance as a linguist and his work ethic.

The record shows that Applicant has not responsibly managed his substantial debts resulting from his business failure and subsequent unemployment. None of the debts alleged in the SOR have been resolved. His financial problems began with his business failure in 2015 or 2016, and his divorce in 2016. He also had a period of underemployment or unemployment in the following year or two. However, his lack of action to resolve the SOR debts since then does not show responsible conduct on his part. He began earning an income in 2018 as a linguist and has been working overseas for most of the past four years without taking responsibility for his debts. None of the mitigating conditions wholly apply to the facts of this case.

I have given significant weight to Applicant's service to the U.S. Government as a linguist, and the sacrifices and dangers that his work requires. His evidence in mitigation, however, does not outweigh the security-significant failure by Applicant to address and resolve his debts from a number of years ago. He let his debts become unenforceable due to their age without making payment arrangements to resolve them. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance. [Decision at 7–8.]

## **Discussion**

There is no presumption of error below, and the appealing party has the burden of raising and demonstrating factual or legal error by the Judge. *See, e.g.*, ISCR Case No. 19-01689 at 3 (App. Bd. Jun. 8, 2020). In this case, Applicant has failed to meet that burden.

Applicant asserts that his credit cards went into default between 2014 and 2015, that he had no means to pay the debts until he secured employment in 2018, that he then deployed to a combat zone and was unable to contact creditors, and that the statute of limitations had run by the time he returned to the United States in March 2019. The evidence of record, in particular Applicant's testimony, supports the Judge's conclusion that Applicant failed to take responsibility for his debts once he secured employment in June 2018. Applicant testified that—once employed—he contacted the creditors, who either wanted payment in full or advised him that the accounts were charged-off and that the statute of limitations would run.

Judge: So, at that point [2018], the debts were not charged off. They were not uncollectable because it had only been a couple of years since they were in default. So, you're saying you took no action when you became employed?

Applicant: That's correct. Tr. at 51 – 52.

The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations. That is, a judge may consider the underlying circumstances of these uncollectable debts in evaluating whether an applicant demonstrated good judgment, trustworthiness, and reliability. We note that all eight debts alleged on the SOR remain unpaid. The record supports the Judge's conclusion that Applicant did not act responsibly under the circumstances. *See, e.g.*, ISCR Case No. 20-01618 at 3–4 (App. Bd. Sep. 29, 2022).

The remainder of Applicant's brief is largely an argument that the Judge failed to apply the mitigating conditions properly. For example, Applicant highlights that his debts are mitigated by the passage of time: "The financial issues in my past are just that—in my past." Appeal Brief at 2. However, an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.*, ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018).

Additionally, Applicant provides new information on appeal, to include details about his employment history since 2018 that are not elsewhere in the record. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive E3.1.29.

Applicant has 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."

**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