



**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: February 6, 2023

In the matter of:	)	
	)	
-----	)	ISCR Case No. 20-01877
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 16, 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 hearing. On December 7, 2022, after close of the record, 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.

The SOR alleged twelve delinquent debts. The Judge found favorably for Applicant on nine and adversely on the other three, which total about \$23,000. 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 mid-forties and married, with no children. He has worked as a systems engineer for 20 years. Beginning in 2010, Applicant experienced intermittent periods of unemployment, but he has been continuously employed since 2016. In his 2019 security clearance application, Applicant disclosed all three debts in issue, asserted that he had communicated with the creditors, and stated his intent to begin payments. In May 2022, Applicant refinanced his home and received about \$100,000 in cash, but did not use the proceeds from the refinancing to pay his SOR debts. At his September 2022 hearing, Applicant produced receipts indicating that he had made payments in August 2022 of \$100 on two of the accounts and of \$170 on the third account. Post-hearing, Applicant provided receipts indicating additional payments in October 2022 on each account.

Applicant is not credited with mitigating the [three debts that remain in issue]. He did not provide documentary evidence of payments in 2020 and 2021 despite promises on his SCA to initiate payments in 2020. He only made two payments on each debt in 2022. According to his IRS tax transcripts, he and his spouse received adjusted gross income exceeding \$140,000 in [Tax Years] 2018, 2019, and 2021. He obtained at least \$100,000 in cash when he refinanced his house in 2022. He did not establish that he was unable to make more progress sooner in the resolution of these three SOR debts, which now total \$15,688. He did not establish a track record of consistent payments on these three debts, and there is insufficient assurance that these three debts are being resolved. [Decision at 10–11.]

### **Discussion**

In his appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. He argues, for example, that the Judge did not give appropriate weight to “the recency of [Applicant's] conduct”, which he asserts “began remote in time from 2013 to 2015 when [Applicant] and his wife both experienced bouts of unemployment and underemployment.” Appeal Brief at 7. It is well established, however, that 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. 15-01690 at 3 (App. Bd. Sep. 13, 2016). Additionally, Applicant argues that he has made progress on other debts and “simply addressed these debts last, but still showed concomitant conduct of arranging a payment plan and making payments toward his plan as agreed.” Appeal Brief at 6. The record, however, supports the Judge's conclusion that Applicant made only two payments on each of the three debts in 2022 and that he has failed to establish a track record of consistent payments. Decision at 10–11.

Applicant argues that the Judge “placed significant weight on Applicant's 2020 tax year.” Appeal Brief at 11. As we have previously stated, a judge may consider non-alleged debts for the following purposes: (a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the

applicant has demonstrated successful rehabilitation; and (d) in applying the whole person concept. *See, e.g.*, ISCR Case No. 20-01232 at 6 (App. Bd. Sep. 29, 2022). The Judge’s determination to consider this non-alleged issue for these limited purposes is well-rooted in the precedent to which he cited.

None of Applicant’s arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Applicant relies on hearing-level decisions in other cases to argue the Judge erred in his analysis of this case, but those cases are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s analysis and decision in this case. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018).

Applicant has failed to establish any harmful error below. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable.

### **Order**

The decision is **AFFIRMED**.

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: Gregg A. Cervi  
Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board