



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
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Date: February 16, 2023

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 22-01631</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 9, 2022, 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 decision on the written record. Department Counsel provided a copy of the file of relevant material (FORM) to Applicant by letter of October 18, 2022, and Applicant submitted a response. On December 13, 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.

Applicant raised the following issue on appeal: whether the Judge failed to consider all the evidence and whether he failed to apply the mitigating conditions properly, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is a high school graduate in her mid-thirties. Single with a teen-aged son, Applicant has worked for her current employer since April 2019. The SOR alleges six delinquent commercial accounts that total about \$49,000. Applicant admitted the debts and explained that the accounts became delinquent during her two periods of unemployment, from October 2014 to December 2015 and from September 2017 to March 2019. During those timeframes, Applicant used credit cards and loans to pay for basic needs for herself and her son. Applicant has not made any agreements to address the past-due accounts because her current income is insufficient, but she intends to hire a debt consolidation service to establish payment plans with the creditors.

In her FORM response, Applicant represented that she had paid over \$46,000 to satisfy four medical accounts, a car loan, and a credit card account, but submitted no evidence to corroborate her claim. She currently helps her parents financially.

No mitigating condition fully applies, given the lack of financial counseling, evidence of a budget, participation in a debt consolidation service, or any good faith effort to repay her creditors.

Applicant's unemployment from October 2014 to December 2015, and from September 2017 to March 2019, was largely beyond her control. The loss of her income had an adverse impact on her bill-paying ability. However, for the mitigating condition to be fully applicable, an applicant must provide credible documented evidence that she acted responsibly under the circumstances. Applicant has been steadily employed since April 2019, but has done nothing to address her delinquent debt. This three-year period of inaction clearly shows that she did not act reasonably and responsibly under the circumstances. [Decision at 5.]

Discussion

In his appeal brief, Counsel for Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends that 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. Essentially, Counsel argues that the Judge did not give appropriate weight to the following mitigating facts: that Applicant's financial problems were caused by conditions beyond her control, that she acted reasonably and responsibly in prioritizing the needs her young son, and that "she is currently financially stable." Appeal Brief at 11. However, our review of the Judge's decision confirms that he considered all these issues. In particular, the Judge highlighted that—in the time since Applicant achieved a state of greater financial stability—she has failed to address any of her alleged debts.

None of Counsel'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). We give due consideration to the Hearing Office cases that Applicant's Counsel has cited, but they are neither binding precedent on the Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018). Moreover, the cited cases are easily distinguishable on their face. Applicant has

failed to establish any 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: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board