



The SOR alleged 13 financial concerns totaling approximately \$49,500,<sup>1</sup> including seven Federal student loans and six medical, consumer, and residential lease accounts that were placed for collection or charged off. In his Answer to the SOR, Applicant admitted each of the debts with explanation. The Judge found in favor of Applicant on the student loan accounts<sup>2</sup> and against him on the remaining six allegations, which totaled approximately \$15,100. On appeal, Applicant asserts that the Judge failed to examine relevant evidence and failed to properly apply the mitigating conditions and Whole-Person Concept. Consistent with the following, we affirm.

### **Judge’s Findings of Fact and Analysis**

Applicant is in his late 40s. He attended a technical institute off-and-on from September 2010 to March 2015; however, the institute closed before he received a diploma. Applicant has worked for his current employer since 2019.

With respect to the six consumer, medical, and lease debts, the Judge found that Applicant stated he was not aware of or not liable for the accounts and was disputing them or that they had been removed from his credit report. Decision at 2-3. The Judge specifically identified four Mitigating Conditions (MCs) as being potentially applicable, including MCs 20(a), 20(b), 20(c), and 20(d), but found that Applicant “did not attribute his financial problems to a singular incident or a period of time that caused the financial hardship” and “gave no insight into the reasons for his accumulation of debt.” Decision at 5. Additionally, he had not participated in credit counseling or established that the financial problems were under control or being resolved. *Id.* The Judge concluded that Applicant “disputed many debts and relied on the fact that some have fallen off his credit report,” and that there was insufficient evidence to establish mitigation. Decision at 6.

### **Discussion**

#### Failure to Examine Relevant Evidence and Mitigating Condition 20(e)

On appeal, Applicant first contends that the Judge erred by failing to consider his successful dispute of four of the alleged debts – SOR ¶¶ 1.a, 1.k, 1.l, and 1.m – appearing on his credit report and “wholly overlooked the reasonable explanations that [he] provided for the debts.” Appeal Brief at 3. Applicant also maintains that the Judge failed to properly analyze those four debts under MC 20(e). Appeal Brief at 4. Because these positions are based on the same facts and underlying argument, we examine them together.

---

<sup>1</sup> The Decision incorrectly identifies the total dollar amount as approximately \$41,500.

<sup>2</sup> We note that the Judge erred in her formal findings regarding student loan debts. As written, the formal findings reflect that the Judge found both for and against Applicant on five of the seven delinquent student loan allegations. Applicant provided a Department of Education letter reflecting these debts were discharged. FORM Item 2 at 3. In the Decision, the Judge found that Applicant stated that he was relieved of the obligation to pay these loans and that they were removed from his credit report. She specifically found, “This is the result of a scandal and closure of the institute that Applicant attended. I find for Applicant on these accounts.” Decision at 2. A fair reading of the Decision reflects that the Judge made a typographical error in her formal findings by finding both for and against Applicant on five of the student loans, and that she intended to find in his favor on the student loan debts.

As an initial matter, Applicant argues that the Judge’s failure to specifically analyze the facts of this case under MC 20(e) was harmful error. A Judge, however, “is not required explicitly to discuss all of the potentially applicable analytical factors set forth in the Directive, which includes the disqualifying conditions, mitigating conditions, and whole-person factors.” ISCR Case No. 12-05512 at 3 (App. Bd. Jan. 12, 2017) (citation omitted). *See also* ISCR Case No. 99-0554 at 4 (App. Bd. Jul. 24, 2000) (“[T]here is no requirement that a Judge must expressly cite or explicitly quote every single provision of the Directive that is applicable or pertinent in a case.”).

Turning to the condition itself, the record evidence is insufficient to invoke MC 20(e). The condition requires that an “individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem *and* provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” Directive, Encl. 2, App. A ¶ 20(e) (emphasis added). Applicant’s argument is that MC 20(e) applied because his general denial of knowledge or liability for the debts constitutes a “reasonable explanation” and his disputing the debts with a credit reporting agency amounts to “action to resolve the issue.” We disagree.

Here, the basis of the disputes is that Applicant does not recognize the alleged debts or believes another party is liable. With respect to the first evidentiary option provided by MC 20(e), Applicant offered no documentation to substantiate his purported lack of recognition of the debts or his denial of their liability. Turning to MC 20(e)’s second evidentiary option, the only evidence that Applicant provided regarding action taken to resolve the issue was his assertion that he disputed the debts on his credit report and his conclusion that the debts were subsequently removed because of his dispute. It is well settled that the absence of a debt on a credit report is not evidence of any particular disposition. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015) (“The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt.”). Rather, there are other reasons that a debt may have been removed from a credit report, including the passage of time. Applicant contends that his disputed debts were removed from his credit report due to successful disputes, but he provided no evidence to corroborate that causation. MC 20(e) requires more than an individual’s claim to not recognize a debt coupled with a claim that he disputed the debt on his credit report.

#### Failure to Properly Apply MC 20(c) and the Whole-Person Concept

Applicant also argues that the Judge failed to properly consider MC 20(c) and the whole-person factors. For example, he contends that the Judge misapplied MC 20(c) when she found that Applicant had not received financial counseling, did not provide a written budget, and was not establishing a repayment plan or working with creditors to lessen the debt. Appeal Brief at 4. Applicant contends that, to the contrary, he had made payments towards debts not listed in the SOR, which constituted “a reasonable plan and a good faith effort to repay the debt.” Appeal Brief at 5. This and the balance of Applicant’s brief, including his argument that the Judge failed to give adequate weight to the Whole-Person Concept, amounts to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant has not rebutted the

presumption that the Judge considered all the evidence in the record, nor has he established that the Judge's conclusions were arbitrary and capricious.

Finally, in arguing that there "is nothing to suggest there is any potential for pressure, coercion, exploitation, or duress," Applicant points to the investigator's written summary in his Subject Interview, and specifically the language that "Subject's overall financial situation is okay being Subject is in the process of paying back debt owed," "[t]he change Subject made is not getting behind on bills by paying bills on time," and "Subject's financial accounts cannot be used against him for blackmail or coercion." Appeal Brief at 5. These comments summarize Applicant's answers to the interviewer; they do not constitute the interviewer's opinion about Applicant's clearance worthiness. *See, e.g.*, ISCR Case No. 10-09595 at 2 (App. Bd. Feb. 3, 2012). In this case, the Judge considered the totality of the evidence in reaching her decision. We find no error in her mitigation and whole-person analysis.

In conclusion, Applicant has not identified any harmful error in the Judge's handling of this case or in her decision. The Judge examined the relevant evidence and articulated a satisfactory explanation for her 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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

### **Order**

The decision is **AFFIRMED**.

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

Signed: Allison Marie  
Allison Marie  
Administrative Judge  
Member, Appeal Board

## Separate Opinion of Administrative Judge James F. Duffy

The Judge found against Applicant on six debts totaling about \$15,100. In his appeal brief, Applicant contends that the Judge erred in failing to analyze under MC 20(e) four of those remaining debts, which total over \$11,000. Applicant's contention has merit.

Applicant disputed the following debts:

1. SOR ¶ 1.a – an apartment complex account of about \$11,000 that was placed for collection. In his Personal Subject Interview, Applicant reportedly stated that he was unaware of this account, claimed he never resided at the apartment complex, and indicated he was currently disputing this account with the collection agencies. In responding to the SOR, Applicant stated he had been disputing this debt for a while and noted “[i]t is now off my credit report.” This debt is not listed on the credit report that Applicant submitted with his SOR Response.

2. SOR ¶ 1.k. – a charged-off consumer debt of about \$400. The Judge found, “Applicant stated that this was his ex-wife’s account that she opened in his name. He stated that he fought to have it removed from his credit report and it no longer appears on the report.” Decision at 3. Of note, this debt still appears on Applicant’s most recent credit report. FORM Item 2 at 18-20.

3. SOR ¶¶ 1.l and 1.m – two medical accounts of about \$270 that were placed for collection. The Judge found, “Applicant stated these were for hospital visits and should have been paid by the [Department of Veterans Affairs]. . . . They have been removed from his 2021 credit report.” Decision at 3.

Despite finding that Applicant disputed these debts and that they no longer appear on his most recent credit report, the Judge failed to list MC 20(e) as a potentially applicable mitigating condition and failed to provide any analysis regarding that mitigating condition. Under the Directive, a Judge must apply the disqualifying and mitigating conditions of the Adjudicative Guidelines that are appropriate to the facts and circumstances of the case. *See, e.g.*, ISCR Case No. 02-05110 at 4-5 (App. Bd. Mar. 22, 2004). In this regard, Directive ¶ 6.3 provides that “[e]ach clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and **the pertinent criteria and adjudication policy**” in the Adjudicative Guidelines. (Emphasis added.) *See also* Directive ¶ E3.1.25 that requires a Judge’s decision to set forth pertinent findings of fact, policies, and conclusions regarding the SOR allegations.

Applicant’s disputes are key issues pertaining to most of the remaining financial concerns. The Fair Credit Reporting Act (15 U.S.C. § 1681i) provides that, when a consumer disputes the accuracy of information contained in a credit report, the reporting agency will conduct a reasonable investigation to determine whether the disputed information is inaccurate and record the current status of the disputed information or delete the item from the file. Applying the substantial evidence standard (Directive ¶ E3.1.32.1) to the present circumstances, a reasonable mind could infer that Applicant’s debts were deleted from his credit reports because he had a legitimate basis to dispute their accuracy. Such an inference is just as plausible as any other reasonable inference that may be drawn from the absence of the debts on the credit report. Applicant’s disputes along

with the fact that most of these debts no longer appear on his credit report was sufficient evidence to require the Judge to analyze them under MC 20(e). By failing to analyze the disputed debts under MC 20(e), the Judge failed to consider an important aspect of the case and failed to examine relevant evidence. *See, e.g.*, ISCR Case No. 02-05110 at 2. Those omissions render the Judge's analysis arbitrary, capricious, and contrary to law. Issues regarding how much weight should be given to this evidence or regarding what other matters may merit consideration under MC 20(e) are for the Judge, not the Appeal Board, to decide.

Given the significance of the disputed debts in comparison to the other remaining financial concerns, I am unable to conclude that the Judge's error was harmless. The decision should be remanded to the Judge to correct this error.

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