

Date: April 7, 2023

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In the matter of:)	
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-----)	ISCR Case No. 21-00747
)	
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 May 21, 2021, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 13, 2023, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant is in his mid-50s and has been married to his current wife since 1998. He has worked as a network installer for a Defense contractor since 2021. Under Guideline F, the SOR alleged three financial concerns totaling approximately \$21,000 in delinquent consumer debt. The SOR further alleged under Guideline E that, between 2017 and December 2018, Applicant communicated with and provided over \$15,000 in financial assistance to two women whom he met through an online dating website, one a resident citizen of the Philippines, and that he deliberately failed to disclose his provision of over \$17,000 to the Philippine national on his 2019

security clearance application (SCA). The Judge found against Applicant on all allegations. On appeal, Applicant asserts that the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law, and failed to properly apply the mitigating conditions and whole-person analysis. Consistent with the following, we affirm.

Discussion

Applicant admitted the financial concerns alleged at SOR ¶¶ 1.a and 1.b and explained that he had established payment arrangements with the creditor for \$50 per month on each account beginning in June and September 2021. Decision at 2, 3. Applicant also admitted the third financial concern, SOR ¶ 1.c, but asserted that the debt resulted from fraudulent activity, claiming that one of the women he met online in 2018 “asked for financial assistance in exchange for an investment opportunity in an overseas construction company.” *Id.* Applicant later noticed suspicious activity in the account, which he reported to the bank and state attorney general. Decision at 3. Following an internal investigation, the bank informed Applicant that the overdrawn balance had increased, and the creditor declined further business with him. *Id.* Applicant provided no evidence of the results of the bank or attorney general investigations. *Id.* The Judge found that there was insufficient information to draw any inferences about the merits of Applicant’s dispute for the debt alleged at SOR ¶ 1.c and the debt could not be credited as fully resolved. Decision at 4, 9.

With respect to the personal conduct concerns, Applicant admitted communicating with the two women and sending them money between 2017 and 2018. Decision at 2, 4. He denied that he intentionally falsified his SCA when he responded “No” regarding whether he had ever provided financial support to a foreign national, explaining that he misunderstood the question. Decision at 4. He initially repeated his negative response during his subject interview, and only disclosed the contacts and financial support after being confronted by the investigator with the information. Decision at 5. The Judge found that “none of Applicant’s [SCA] omissions of his communications with the two foreign nationals . . . were voluntarily corrected by Applicant in his ensuing [interview] before he was confronted” by the agent with the information. Decision at 10. The Judge concluded that none of the Guideline F or E mitigating conditions fully applied.

On appeal, Applicant contends that the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all the evidence, and by not properly applying the mitigating conditions and Whole-Person Concept. For example, Applicant argues that the Judge “did not place appropriate weight on . . . the good faith efforts made and [the] articulated plan to pay off underlying delinquencies.” Appeal Brief at 5. However, the Judge’s determination that Applicant’s “cited delays in addressing his admitted debts . . . are not attributable to any extenuating hardship conditions that could impair his ability to timely address” them, and that debts were being “addressed through payment plans initiated after the issuance of the SOR” is supported by the record, as is his conclusion that Applicant was “not able to demonstrate a sufficient tangible track record of actual debt reduction.” Decision at 8, 9. Applicant’s arguments on appeal advocate for an alternative weighing of the evidence, which is not enough to show 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.

Applicant asserts that the Judge's findings "are so implausible that [they] cannot be ascribed to a mere difference of opinion." Appeal Brief at 7-8. We disagree. Our review of the record confirms that the Judge considered and discussed the issues highlighted by Applicant on appeal and complied with the requirements of the Directive in his whole-person analysis by considering the totality of the evidence in reaching his decision. Applicant failed to establish that the Judge committed any harmful error. 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). "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: 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