DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
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Date: May 24, 2023

In the matter of:	)	
-----	)	ISCR Case No. 21-01830
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 August 31, 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) and the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4, effective June 8, 2017. Applicant requested a hearing. On March 31, 2023, after close of the record, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged ten delinquent consumer and tax debts and was amended at hearing to allege an additional tax delinquency. The Judge found favorably for Applicant on eight allegations and adversely on the other three. Applicant raises the following issue on appeal—whether the Judge failed to consider all the evidence, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Applicant is in his mid-forties and married with two minor children. He served in the military from 1996 through 2002, was honorably discharged, and has held a security clearance since 2006.

The three debts resolved adversely to Applicant include a deficiency of approximately $10,000 for a car that was repossessed in 2016, delinquent state taxes of approximately $8,200 for tax years (TYs) 2010 and 2011, and a federal tax debt of $3,000 for TY 2020. Applicant contacted the creditor regarding the auto debt in approximately 2021, but was subsequently advised that the file was closed and collection activity had ceased. In January 2020, Applicant entered into a payment agreement with his state to satisfy the tax delinquency, but has not made consistent payments. Regarding the federal tax debt for TY 2020, Applicant had not entered into a payment plan at the time of the hearing. The Judge concluded that the three unresolved debts remain of security concern:

> Specifically, Applicant chose to eschew his payment agreement with his state tax authority to pay his delinquent 2010 and 2011 taxes, in favor of purchasing luxury items, including multiple vacations and the recent purchase of an $82,000 personal vehicle. Furthermore, his decision to enroll in financial counseling a week before the hearing does not mitigate the underlying security concern. Ultimately, Applicant's satisfaction of many of the debts, and his investigation into the status of some of his other debts [is mitigating] for those debts, but is insufficient to carry the burden, when considered in tandem with the circumstances surrounding how Applicant incurred the debts and how long the state tax debts have been delinquent. [Decision at 6.]

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. For example, Applicant argues that the Judge did not give appropriate weight under AG ¶ 20(c)[1] to his recent credit counseling "solely due to the timeframe" and asserts that "[i]t should not matter when [Applicant] received financial counseling." Appeal Brief at 12. Contrary to Applicant's argument, it is well established that the timing of an applicant's corrective action is a relevant factor to consider, as an applicant who takes action to resolve security concerns only after becoming aware that his clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his personal interests are not threatened. *See, e.g.*, ISCR Case No. 19-01911 at 6 (App. Bd. Nov. 4, 2020). Moreover, for full credit under AG ¶ 20(c), an applicant must not only show that he received financial counseling but also that the financial problem is resolved or is being resolved.

[1] "[T]he individual received or is receiving financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or under control[.]" AG ¶ 20(c).

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 failed to establish that the Judge committed any 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. His 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* AG ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The decision is **AFFIRMED**.

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

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

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