Date: June 15, 2023

In the matter of:	)	
-----	)	ISCR Case No. 20-03457
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 14, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline F (Financial Considerations) of the National Security Adjudicative Guidelines in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 29, 2023, Defense Office of Hearings and Appeals Administrative Judge Eric C. Price denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged six delinquent debts, including child support, consumer, and medical accounts. The Judge found in Applicant's favor on two of the debts, and against him on the three child support arrearages, which were alleged as delinquent for approximately $64,000, and one consumer debt charged off for approximately $1,000.

Judge's Findings and Analysis

Applicant is in his late 30s. He served in the military from 2008 to 2020 and was pursuing his bachelor's degree at the time of the hearing. Applicant was married in 2011 but has been

separated since 2018 and has one minor child from that marriage. Applicant also has one adult and two minor children from other relationships, and he attributed his financial problems to the costs of supporting his four children, as well as under and unemployment.

After Applicant's first child was born in 2003, he paid for some of the child's expenses although he did not initially have a formal support agreement in place. In July 2015, Applicant was ordered to pay retroactive and ongoing child support of about $840 per month but, in calculating the arrearage owed, the court gave him no credit for the informal support previously paid. Payments were thereafter made by income withholding consistent with that court order and the remaining arrearage was approximately $12,300 as of the hearing (SOR ¶ 1.b).

Applicant's second child was born in 2006 and a child support order was entered in July 2007, under which Applicant was required to pay retroactive and ongoing monthly child support of about $300. Payments for this obligation were also made by income withholding and, as of the hearing, the remaining arrearage was approximately $6,100 (SOR ¶ 1.c).

Finally, Applicant's third child was born in 2013 and he paid informal child support for a time. In April 2019, Applicant was court-ordered to pay about $770 for retroactive and ongoing monthly support, again via income withholding, and the remaining arrearage as of the hearing was approximately $33,049 following compliant payments (SOR ¶ 1.a).

As of the hearing, Applicant had reduced his cumulative arrearage by at least $14,000 since the SOR was issued, a period of about 17 months, and the Judge found that Applicant's most recent credit report reflected "an improved financial situation, and the three child support accounts were the only past-due accounts listed." Decision at 4. In concluding that none of the mitigating conditions fully applied, the Judge noted that the child support arrearages were "being paid by involuntary payroll deductions pursuant to court order or tax refund interception, which are not the equivalent of good-faith payments." Decision at 7.

Discussion

On appeal, Applicant provides new evidence in the form of narrative updates regarding the status of the three child support debts. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. The Board's authority to review a case is limited to matters in which the appealing party has alleged that the Judge committed harmful error. To that end, Applicant also takes issue with the Judge's assessment that his child support payments are being involuntarily withheld. Applicant argues that the Judge failed to consider that his child support obligation is being paid through income withholding pursuant to the Florida Statutes, and the Judge therefore mischaracterized the payments as involuntary. This argument has merit and warrants review on appeal.

In deciding whether a judge's conclusions are arbitrary or capricious, the Appeal Board will review the decision to determine whether: it fails to examine relevant evidence; fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; fails to consider relevant factors; reflects a clear error of judgment; fails to consider an important aspect of the case; offers an explanation for the decision

that runs contrary to the record evidence; or is so implausible that it cannot be ascribed to a mere difference of opinion. ISCR Case No. 95-0600 at 4 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Applicant's child support arrearage, which constituted the bulk of his outstanding debt and the Judge's adverse formal findings, is being paid via income withholding orders (IWO). *See, e.g.*, Applicant Exhibit A. Reviewing the decision in this case requires addressing two common misconceptions regarding child support. First, a child support *arrearage* does not necessarily equate to a child support *delinquency*. An arrearage may be assessed due to missed or incomplete payments owed pursuant to an existing child support order, which indicates delinquency by the obligor. An arrearage may also result from entry of an initial order that calculates support retroactively. Whether such a retroactive calculation constitutes a delinquency, and the security significance thereof, depends on the circumstances of the case. In the present case, the record reflects that all three of Applicant's arrearages resulted when initial orders were entered that calculated both current and retroactive child support.

Second, a child support IWO does not necessarily carry the same negative implications as other forms of involuntary payment. In his decision, the Judge correctly noted that the Appeal Board has long held that reliance on garnishment or other involuntary means of debt resolution does not equate to a good-faith repayment by the debtor. *See, e.g.*, ISCR Case No. 08-06058 at 7 (App. Bd. Sep. 21, 2009). Child support IWOs, however, are not *per se* equivalent to garnishment orders. Although both operate via court-enforced deduction from an individual's assets, IWOs have nuances that render them distinguishable from garnishments and potentially excepted from Appeal Board precedent regarding involuntary payments.

While the automatic and court-enforced nature of IWOs means payments are not made strictly "voluntarily," they are not necessarily punitive or entered because of prior or forecasted delinquencies. Rather, "immediate income withholding" – the Federally mandated default method for paying child support in every State – requires, with exceptions, entry of an IWO whenever an initial child support order is entered.[1] It is imposed regardless of an obligor's history of payment compliance, simply to ensure child welfare.[2] Moreover, immediate income withholding, by definition, cannot represent a prior failure to pay because it is *immediate* – meaning the IWO is entered concurrent with the child support determination, before delinquencies can have occurred. As stated above and relevant to the facts of this case, an arrearage may be calculated based on a retroactive child support award, but that is not the same as a balance that accrued due to intentional

[1] *See* 42 U.S.C. 666(a)(8)(B) and (b). The requirement is codified in Applicant's State in the Florida Statutes. *See* FLA. STAT. § 61.1301(1)(a) (2009) (requiring entry of an IWO in cases establishing, enforcing, or modifying a child support obligation).

[2] Immediate income withholding was introduced by The Family Support Act (FSA) of 1988. Unlike the delinquency-based income withholding introduced in prior FSA amendments, the 1988 amendments required states to implement immediate income withholding in all child support orders issued beginning January 1, 1994, with exceptions for good cause or alternate arrangements agreed upon in writing by both parents and the court. *See* Dep't of Health & Human Servs., Off. of Child Support Enf't, Income Withholding for Child Support, *available at* https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/im_01_06a.htm.

default.[3] Applicant's IWOs were entered along with his initial child support orders, and therefore they appear to represent immediate income withholding and are distinguishable from garnishment.

The record in this case reflects monthly payments were made consistent with each IWO since their respective entries in July 2007, July 2015, and April 2019, a track record of payments ranging from three to 15 years as of the hearing. Additionally, Applicant's credit reports reflect that the cumulative balance of his three child support accounts was approximately $68,000 as of March 2019 (GE 3 at 3) and was reduced to approximately $51,000 as of May 2022 (GE 5 at 4), a $17,000 reduction over those three years alone. A good-faith effort to repay or otherwise resolve debts requires a meaningful and evidenced track record of debt reduction. *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). While Applicant was required to pay his monthly child support obligation by IWO and therefore his payments were arguably not voluntary, there is no question that the payments were made consistently over many years and therefore amount to a meaningful track record of debt reduction. It is unclear what more Applicant should have done in this case to demonstrate good faith repayment sufficient to mitigate the security concerns stemming from his child support arrearages.

Finally, Applicant resubmits with his appeal evidence showing that he contacted the collection agency responsible for the account alleged at SOR ¶ 1.d, a consumer debt charged off for approximately $1,000, and the agency was unable to locate the account. This information was included in the record below and the Judge found that it was insufficient to establish that the debt was resolved. In consideration of the discussion about Applicant's child support accounts, above, this relatively minor debt is the single remaining SOR allegation not fully or in the process of being resolved. Applicant was not required to establish that he had completely paid off his indebtedness. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). The totality of the record supports that Applicant addressed his debts responsibly and that his financial problems are under control and no longer present security concerns.

Based on our review of the record, we conclude that the Judge's decision failed to consider the foregoing important aspects of the case and runs contrary to the record evidence.

[3] Conversely, when income withholding is instituted *after* entry of a support order where alternative payment arrangements were attempted first, it is more likely to represent a remedy to protect against further delinquencies. That is not the case here.

Order

The decision is **REVERSED**.

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

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

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