

Date: June 1, 2023

In the matter of:)
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Applicant for Security Clearance)
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ISCR Case No. 22-00182

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 4, 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 the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). The Government subsequently amended the SOR to include cross-alleged security concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). Applicant requested a hearing. On March 27, 2023, Defense Office of Hearings and Appeals 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.

The SOR alleged sixteen financial concerns totaling approximately \$49,000, including delinquent consumer and utility debt and a child support arrearage. The Judge found in favor of Applicant on six of the Guideline F allegations and against him on the remaining ten alleged accounts. The Judge also found in favor of Applicant on the Guideline J and Guideline E allegations, which are not at issue on appeal.

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.

Judge's Findings of Fact and Analysis

Applicant is in his mid-40s. He served in the military from 1995 until his honorable discharge in 2015. Applicant is twice divorced and has one adult child from his first marriage for whom he provides support. He divorced his second wife in late 2015, was remarried in 2020 and has a minor child and minor stepchild from his current marriage. Tr. at 36-41. Applicant has held a security clearance since 2014, granted in conjunction with his former military service, and has been employed as a Reserve Officers Training Corps instructor since late 2019. Applicant's monthly net income from all sources is approximately \$7,300 and his wife's is approximately \$4,000. Applicant also has over \$20,000 in assets.

The Judge was unable to reconcile Applicant's minor progress in resolving his delinquent accounts with his available financial resources. Decision at 4. He concluded that mitigating condition AG 20(b) was only partially applicable because, although Applicant's financial problems could "be attributed to extenuating circumstances," including "problems in finding work, his increased family burdens, and his strained marriage that ultimately ended in divorce," Applicant failed "to make more concerted efforts to address his debt delinquencies . . . with the assortment of monetary resources available to him." Decision at 9. Similarly, as of the close of the record, Applicant had "not made enough progress in addressing his delinquent debts to enable him to avail himself of the mitigating benefits of [AG] 20(d)." Decision at 10.

Applicant's Appeal

Challenges to Findings of Fact

On appeal, Applicant challenges several of the Judge's factual findings. For example, Applicant takes issue with the Judge's calculations regarding the family's monthly income and expenses, arguing that the Judge "failed to properly calculate the amount owed and [Applicant's] ability to repay his creditors." Appeal Brief at 4. It appears that the Judge correctly assessed the family's combined monthly net income at approximately \$11,300, but incorrectly assessed their monthly expenses and thereby also incorrectly calculated their monthly net remainder. Based on Applicant's budget, his family's combined monthly expenses are approximately \$9,000,¹ and therefore their combined net remainder is about \$2,300, not \$5,500 as calculated by the Judge. AE B. While the Judge's findings regarding Applicant's monthly expenses and remainder are erroneous, the error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 10-01021 at 3 (App. Bd. Nov. 18, 2011). Despite this error, the fact remains that he used extremely little of his available funds to resolve his nearly \$49,000 in delinquent debt prior

¹ Applicant reported that his individual monthly expenses are estimated at about \$1,800, his wife's are about \$4,010, and their joint family expenses are about \$1,800 and \$1,300. Applicant Exhibit (AE) B.

to the close of the record. Indeed, the record supports that Applicant made few payments,² and that his remaining outstanding debts ranged from amounts as small as about \$230 to as large as over \$11,000. The record evidence therefore supports the Judge’s conclusion that, “[w]ith ample resources at his disposal to pay off the smaller debts and negotiate settlement arrangements with the larger accounts, he has simply not been active enough about working with his creditor[s].” Decision at 9-10.

Applicant next argues that the Judge “overlooked evidence that [he] paid off [an account] that had a balance of \$1,027.82.” Appeal Brief at 4. The debt was not alleged in the SOR, and we interpret Applicant’s argument as seeking whole-person credit for resolving an additional debt. While this evidence was *not*, in fact, overlooked, we agree that the Judge misapplied it. Specifically, the Judge found that Applicant had addressed SOR 1.a, a note loan placed for collection for about \$10,500. *See* GE 3 at 2.³ The Judge found favorably on this allegation, noting that Applicant established a payment agreement for the debt and had “made three payments of \$342 . . . in compliance with the agreement’s terms.” Decision at 4. The Judge appears to have inadvertently associated Applicant’s post-hearing evidence regarding the non-alleged debt⁴ with the \$10,500 debt alleged at SOR 1.a. The Judge’s favorable finding on SOR 1.a appears to rest on the mistaken belief that Applicant had begun to address the debt; however, Applicant testified at hearing that he had not yet contacted the creditor or made any payments on the debt. Tr. at 49-50. The Judge’s favorable finding regarding SOR 1.a was therefore questionable and the total debt still outstanding as of the hearing was approximately \$42,700. Because this error inured to Applicant’s benefit, it too is harmless. *See, e.g.*, ISCR Case No. 14-06259 at 2 (App. Bd. Jun. 8, 2016).

The remainder of Applicant’s challenges to the findings fail to establish any harmful error. The Judge’s material findings of security concern are “based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence.” ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Challenges to Weighing of the Evidence

Applicant also 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 recency of [Applicant’s] conduct,” because he “experienced financial hardship due to his divorce from his ex-wife which created a snowball effect, starting in November 2016.” Appeal Brief at 8. Applicant reiterates this argument throughout his appeal, later asserting that MC 20(a) is “entirely applicable as the debt arose in 2016 which is remote in time and under such circumstances that it is unlikely to recur.” Appeal Brief at 12. Contrary to Applicant’s argument, however, the eleven debts that remain outstanding

² Applicant settled the debt alleged at SOR 1.j for \$600, paid the debts alleged at SOR 1.m and 1.n for \$214 and \$156, respectively, and brought his \$2,955 child support arrearage current.

³ As of January 2023, the debt remained in collection and the balance had increased to \$11,792. *See* GE 5 at 7.

⁴ Applicant’s post-hearing documentation reflects a July 2022 payment confirmation from a different and unrelated creditor, with payments of about \$342 scheduled to be made in July, August, and September 2022. AE E.

and unaddressed represent a continuing course of conduct, which undermines any argument that his debts are not recent or are unlikely to recur. *See* ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010).

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 established that the Judge's conclusions were arbitrary, capricious, or contrary to law.

Applicant has not established that the Judge committed harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, and the record evidence is sufficient to support that the Judge's findings and conclusions are sustainable. "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." AG ¶ 2(b).

Order

The Judge's adverse security clearance 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