

Date: July 21, 2023

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Applicant for Security Clearance )  
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ISCR Case No. 21-01947

**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 February 1, 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) 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 June 1, 2023, Defense Office of Hearings and Appeals Administrative Judge Carol G. Ricciardello denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged three delinquent debts totaling approximately \$88,000. The Judge found against Applicant on all three allegations. On appeal, Applicant argues the Judge improperly weighed the evidence and failed to consider relevant evidence in mitigation. In addition, Applicant alleges that the Judge was biased against him based on race and elitism. Consistent with the following, we affirm.

**Judge’s Findings and Analysis**

Applicant is in his mid-40s and holds a bachelor’s degree and graduate certificate. He has never been married and has no children. He has worked for his current employer since 2020 and

has previously held security clearance eligibility. He is also self-employed. In 1998, he filed Chapter 7 bankruptcy, discharging about \$10,000 of credit card debt. From 2008 to 2010, Applicant purchased three rental properties. By 2015, he could no longer pay the mortgages on all three. He walked away from two of the mortgages, defaulting on his payments. The debt alleged in SOR ¶ 1.c is one of the mortgages that was charged off for approximately \$68,000. The debt alleged in SOR ¶ 1.b resulted from a default judgment on a credit card debt for about \$9,000. The card was used to finance maintenance and expenses related to his rental properties. Finally, the debt alleged in SOR ¶ 1.a resulted from a utility bill for about \$11,000 owed to a landlord when Applicant operated a crypto-mining business in a residential apartment not intended for business purposes. Applicant rented the apartment because utilities were included. The landlord filed a lawsuit against Applicant that is still pending, and during the hearing, Applicant was vague as to the actions he took to address the debt and lawsuit.

Applicant touted his substantial financial resources during the hearing and in evidentiary submissions. His annual salary is about \$140,000, and he said that in 2022 he netted about \$200,000. Applicant's assets also included approximately \$32,000 in cash and \$325,000 in various investment accounts. After the hearing, Applicant provided documentation showing he negotiated a payment plan with the creditor in SOR ¶ 1.b, made a \$1,000 payment, and agreed to pay \$235 per month from April 2023 to March 2026. He also provided a letter he sent to the District Court in April 2023 regarding the lawsuit on his utility debt alleged in SOR ¶ 1.a, acknowledging the lawsuit against him and promising to pay the debt. Finally, he provided a credit report that reflects the charged-off mortgage alleged in SOR ¶ 1.c.

The Judge found that Applicant intentionally chose not to pay his mortgage on a rental property because it was no longer financially advantageous to him, and that he defaulted on a credit card debt accrued to finance improvements and pay expenses for his properties because he no longer owned the property and wanted to wash his hands of property-related debt, despite a default judgement entered against him. Additionally, his efforts to negotiate a settlement and begin paying on the debt were not timely. Finally, Applicant's effort to contact the court where his landlord had filed a lawsuit to collect the utility debt was not timely, and his promises to pay the debt in the future is inconsistent with financial responsibility.

### **Discussion**

On appeal, Applicant contends the Judge was racially biased, bigoted, and displayed a demeaning, hostile, and elitist attitude toward him. Additionally, he provided documents identical to those admitted into the record and argues that the Judge did not appropriately consider his financial status, financial history, record of financial accomplishments, assets on hand, and his clearance history. Finally, he alleges the Judge imposed a "black tax" that places unreasonable requirements and history of financial responsibility on African American applicants that are inconsistent with treatment given to non-minority clearance holders with similar financial backgrounds. He notes,

Final [t]hought is there is no possible way a non[-]biased sane person would look at my financial status, and history and conclude that I do not pay bills or I'm not wise with my money. There's no way a non-biased sane person would conclude

that I couldn't be trusted with a clearance when I have proven the opposite for decades now. App. Brief at 4.

There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 17-02391 at 2 (App. Bd. Aug. 7, 2018). Applicant's allegations of the Judge's racial bias or an elitist attitude, either during the hearing or in the decision, are baseless. We examined the entire record and Decision, paying particular attention to the transcript of the hearing. Our reading of the record reflects no such bias, either racially or otherwise, and the Judge's findings and conclusions are sound, based on the record, and fully considerate of the facts. We find nothing therein that would cause a reasonable person to question the Judge's impartiality in this case. Applicant has neither rebutted the presumption that the Judge was unbiased nor established that he was denied any due process afforded him under the Directive.

Additionally, there is no evidence that the Judge imposed or adhered to a "black tax" that would have placed an unfair burden on, or disparate treatment of, Applicant as opposed to other applicants. A judge's expressed skepticism about the credibility of a witness does not cast doubt on his or her impartiality. *See, e.g.*, DISCR Case No. 90-0639 at 3, n.3 (App. Bd. Jul. 17, 1991). The Adjudicative Guidelines do not compare behavior of one applicant against another as "each case must be judged on its own merits." AG ¶ 2(b). Nothing in the record supports Applicant's claim that he has been singled out or treated unfairly. Claims that others with clearances have worse financial records is not a relevant consideration in this case. The conduct of others does not excuse an applicant's security significant conduct or render it any less security significant. *See, e.g.*, ISCR Case No. 90-0822 at 3-4, n.2 (App. Bd. Aug. 30, 1991).

The remainder of Applicant's appeal brief consists of an explanation of his efforts to resolve the alleged debts, financial history, and current financial status. Applicant's challenges to the Judge's findings include to a large measure a disagreement with the manner in which the Judge weighed the evidence. To the extent that he is contending the Judge mis-weighed or did not consider record evidence, we find no merit in those assertions. None of his arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 21-01169 at 5 (App. Bd. May 13, 2022).

Applicant's assertions on appeal substantially duplicate the information that was presented to the Judge. To the extent he is presenting new information, the Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. It is also well established that an applicant's ongoing, unpaid debts demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.*, ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). Moreover, the Board has held that until an applicant has a meaningful financial track record, it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolved debts. The phrase "meaningful track record" necessarily includes evidence of actual debt reduction through payment on debts. *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). An applicant's promise to take remedial action in the future, however credible, is not evidence of actual rehabilitation. ISCR Case No. 95-0680 (App. Bd. Oct. 16, 1996). There is no substitute for a track record of timely debt payments

and otherwise acting in a financially responsible manner. *See, e.g.*, ADP Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

Finally, Applicant argues that he was previously awarded a security clearance when his finances were worse than at present. The Government is not precluded from making an adverse clearance decision despite prior favorable ones, and a good security record is not a bar to an unfavorable decision. Applicant's prior favorable security adjudications were noted in the decision and the Judge was bound to consider them along with the other evidence in the record. However, Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See* ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant failed to establish that the Judge committed any harmful 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. The decision is sustainable on the 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). *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: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board