

Date: July 12, 2023

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In the matter of:)	
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-----)	ISCR Case No. 20-01230
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Applicant for Security Clearance)	
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 3, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of 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). On May 10, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 14 financial concerns, including delinquent accounts that were placed for collection or charged off for approximately \$29,000 and a 2016 mortgage foreclosure. The Judge found in favor of Applicant on seven of the allegations, including the foreclosure, but against him on the remaining debts, which totaled approximately \$20,000. 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, in his mid-40s, is twice married and divorced and has one adult and two minor children. He served in the military from 2000 until his honorable discharge in 2010 and has held a security clearance since 2007. Since his military discharge, Applicant has worked consistently for federal contractors and private employers with the exception of about five months' unemployment in early 2012 and again in mid-2015, both due to contracts ending. His income was approximately \$76,000 in 2014, dropped to \$37,700 in 2015, and ranged between \$65,000 and \$75,000 in 2016 and 2017.

The Judge found that none of the mitigating conditions were fully applicable. Applicant's delinquent debts are numerous and recent. Although he encountered circumstances largely beyond his control, he failed to act responsibly regarding the most significant debt alleged in the SOR, namely a motorcycle loan charged off for over \$15,000, and he presented no evidence of voluntary payments or payment plans for any of the debts. The Judge concluded that, in consideration of the foregoing, Applicant had not mitigated the security concerns raised by his financial delinquencies.

Discussion

On appeal, Applicant challenges the Judge's finding that he presented no evidence of financial counseling, arguing instead that he testified that he engaged in financial counseling following his foreclosure and that he was advised by a friend and financial advisor to track and prioritize making consistent debt payments. Appeal Brief at 9, 13, 15. The transcript reflects that Applicant testified that he received financial counseling following his 2016 foreclosure and had recently reached a point where he could apply some of what he learned. Tr. at 78. When questioned about the type of counseling he received, however, Applicant testified that he did not attend a formal class but that his friend, who is a financial advisor, gave him advice on how to improve his finances. He described his friend as "a mentor who went through the same thing with his finances, and over time . . . he has done a lot better because he was horrible with his money." Tr. at 79-80. Considering the informal nature of the counseling that Applicant described and the lack of proof that his friend was a "legitimate and credible source" for financial counseling per AG ¶ 20(e), we find no harmful error in the Judge's finding.

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 erred in failing to apply mitigating condition AG ¶ 20(a) once he found that Applicant's financial circumstances were largely beyond his control, primarily relying on his periods of under and unemployment. Appeal Brief at 11. This argument conflates the requirements of AG ¶ 20(a), which contemplates financial problems that are unlikely to recur due to age, frequency, or unusual circumstances, with those of AG ¶ 20(b), which contemplates financial problems resulting from circumstances *largely beyond an applicant's control*. The Judge's finding that "Applicant

encountered circumstances largely beyond his control” (Decision at 6) did not necessitate a finding that those circumstances are unlikely to recur or that AG ¶ 20(a) applies.

Applicant next argues that AG ¶ 20(a) applied because his debts are neither recent nor recurring, noting that, subsequent to his unemployment that occurred “around ten . . . years ago,” he has maintained his finances and has increased his income. Appeal Brief at 11. Contrary to Applicant’s argument, debts that remain outstanding 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 also takes issue with the Judge’s assessment that AG ¶ 20(b) did not fully apply because, aside from the motorcycle loan, the Judge “provides no analysis for whether [Applicant] acted responsibly for the six other debts that were not mitigated in the SOR.” Appeal Brief at 12. AG ¶ 20(b) is a two-prong mitigating condition that applies when 1) the conditions that resulted in the financial problem were largely beyond the person’s control, *and* 2) the individual acted responsibly under the circumstances. Of the seven debts found adversely, Applicant discussed six during his November 2017 security clearance interview. *See* Government Exhibit (GE) 2 at 9-13. He asserted that he began making payments on the motorcycle debt sometime in 2017 but provided no documentation to support said payments, and his credit report reflects that he stopped paying on the account in mid-2015 and it was charged off in late 2015 with no subsequent activity. *See* GE 2 at 9; GE 3 at 3; GE 6 at 3. With respect to the remaining debts, he indicated his plans to contact the lenders and attempt to resolve the accounts by early 2018. GE 2 at 11-13. By his June 2022 SOR response, however, Applicant was either still researching the debts or had shifted his position to deny liability for some. As of the hearing, Applicant remained unable to document any resolution efforts. *See* Tr. at 53-57, 61-67. While Applicant is correct that the Judge declined to analyze those six adverse debts under the second, responsible action prong of AG ¶ 20(b), that is likely because there is no evidence corroborating that Applicant took *any* action on *any* of those debts at *any* point since the start of the security clearance process or before.

Applicant’s arguments on appeal simply 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). Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which 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.” AG ¶ 2(b).

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