

DEPARTMENT OF DEFENSE DEFENSE LEGAL SERVICES AGENCY DEFENSE OFFICE OF HEARINGS AND APPEALS APPEAL BOARD POST OFFICE BOX 3656 ARLINGTON, VIRGINIA 22203 (703) 696-4759

Date: September 18, 2023

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In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 22-01804

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 December 13, 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 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On July 28, 2023, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Pamela C. Benson denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the Judge's decision.

The SOR alleged that Applicant had four delinquent debts totaling over \$20,000. In responding to the SOR, Applicant admitted each of the allegations. The Judge summarized the case as follows:

Applicant did not begin to pay on two of his delinquent debts until after the SOR was issued. He did not make any payments on the other two delinquent debts. He

did not take responsible action to address his financial obligations until his security clearance was in peril, and he still has unresolved delinquent debt. Eligibility for access to classified information is denied. [Decision at 1.]

Applicant's appeal brief contains assertions and documents that were not presented to the Judge for consideration. In fact, some of those documents post-date the Judge's decision. We are prohibited from considering that new evidence. *See* Directive ¶ E3.1.29 ("No new evidence shall be received or considered by the Appeal Board.").

Applicant is apparently challenging the Judge's findings of fact by stating that he did not recall interviews with an investigator in March 2020 or in November 2021. Applicant is correct that there is no document in the Government's File of Relevant Material (FORM) showing that Applicant was interviewed in March 2020. However, the summary of his interview with an investigator in November 2021 is included in FORM, Item 3. The typographical error referencing a March 2020 interview instead of the actual November 2021 interview is harmless because it did not likely affect the outcome of the decision. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). Applicant also asserts the Judge erred in finding that he has no children, noting he has a stepson, and in failing to find that he held a clearance since 1996. We find no merit in these latter assertions of error because Applicant failed to list that he had a stepchild in his security clearance application and only listed the granting of his last clearance in 2011. FORM, Item 2 at 21 and 31-32. The Judge's findings that Applicant had no children and has held a clearance since 2011 were supported by the evidence that was presented to her.

Applicant further contends the Judge failed to consider some evidence that he submitted in an email in July 2023. We note that Applicant's FORM Response contains several documents showing that he was making payments, including as late as July 2023, on two of the alleged debts. The Judge made findings that Applicant was making payments on these debts and that they are being resolved. None of Applicant's 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. 22-02225 at 2 (App. Bd. Jul. 27, 2023).

Applicant failed to establish that the Judge committed any harmful error or that he warrants any remedial action. 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**.

<u>Signed: James F. Duffy</u> James F. Duffy Administrative Judge Chair, Appeal Board

<u>Signed: Gregg A. Cervi</u> Gregg A. Cervi Administrative Judge Member, Appeal Board

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