

Date: October 17, 2023

In the matter of:)
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)
Applicant for Security Clearance)
_____)

ISCR Case No. 20-01139

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 August 17, 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 (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 August 1, 2023, Defense Office of Hearings and Appeals Administrative Judge Eric C. Price denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 29 delinquent debts totaling approximately \$85,000. The Judge found against Applicant on 25 allegations, and in his favor on four allegations. On appeal, Applicant argues the Judge improperly weighed the evidence and failed to consider relevant evidence in mitigation by claiming the Judge was unaware of certain mitigating conditions and did not consider payments made on debts since the SOR was issued. Consistent with the following, we affirm.

Judge's Findings and Analysis

Applicant is in his mid-30s and holds bachelor's and master's degrees. He is married and has three children. He has worked for his current employer since 2018 and has never held security clearance eligibility.

The Judge found that much of Applicant's debt arose from a failed business he financed with personal, unsecured credit. He financed about \$59,000 for the business that remained open for less than a year. Upon the failure of the business, Applicant said he hired a debt-consolidation company in 2017 to address about \$38,000 in unsecured debt, and he made payments for about two years in accordance with the agreement. When the company ceased business in his state, he settled some debts on his own, and had some accounts removed from his credit report.

After being notified of the importance of resolving delinquent debts during his security eligibility investigation, Applicant hired a second credit repair company in March 2021. As of March 2023, 12 SOR accounts were enrolled at 0%, one account was enrolled at 100%, one account was paid in full, and one account was being "reworked." Applicant had deposited about \$11,000 into the plan and was scheduled to make two deposits of about \$427 in March, and one in April 2023. According to Applicant, the agreement required recurring deposits of \$840 per month for 60 months.

The Judge found that Applicant has not made the full payments of \$840 per month since beginning the program and failed to submit sufficient documentary evidence of resolution of his debts, payments to the credit-consolidation company, or evidence showing the actions of a credit repair company. He noted that debts that were removed from a credit report do not necessarily reflect satisfactory resolution, and there is insufficient evidence of contacts with creditors or other efforts to resolve debts. Although the Judge credited Applicant with hiring the second credit repair company to address 15 of the SOR debts, and for payments toward other debts that were resolved, the timing of his actions, limited details of the agreement, and discrepancies between his claimed payments and documented payments were insufficient to fully establish that he has adhered to a good faith effort to resolve delinquent debts.

Discussion

On appeal, Applicant contends the Judge was unaware of or did not appropriately consider mitigating evidence of his use of debt consolidation and repair companies to resolve his debt and did not consider the debts he resolved since issuance of the SOR. 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. Applicant mischaracterizes the Judge's statements during the hearing as a lack of understanding of the mitigating conditions with regard to debt resolution efforts.

Specifically, we find no basis for Applicant's contention that the Judge did not know that a debt resolution program was an acceptable way of resolving debts under Guideline F mitigating conditions. The record reflects that the Judge painstakingly reviewed the mitigating conditions with Applicant in light of the evidence submitted at the hearing and suggested further documentation that Applicant could submit to bolster his case in mitigation. *See, e.g., Tr. at 69-*

86. To the extent that Applicant 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).

The Judge correctly cited ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016) for the proposition that the absence of debts on a recent credit report is not meaningful evidence of debt resolution because debts may be removed for various reasons such as the passage of time. 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). Promises to pay off delinquent debts in the future are not a 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).

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