



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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REDACTED COPY

Date: November 28, 2023

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

ISCR Case No. 22-01585

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 October 26, 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 September 21, 2023, 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.

Applicant, in his mid-50s, has been married to his second wife since 2014. He adopted his current wife’s three children, now all adults, to remove them from an abusive relationship, for which he incurred substantial legal expenses. Applicant has been employed by his current defense contractor employer since 2021 and currently holds a security clearance. The SOR alleged ten financial concerns, including delinquent consumer debt and an unpaid Federal tax debt for tax year 2016. The Judge found against Applicant on seven of the consumer debts, which totaled approximately \$107,000, and the \$33,000 delinquent tax debt.

On appeal, Applicant first asserts that he requested and was denied a copy of his complete file that would be presented to the Appeal Board for review on the basis that he had already received all such documents, which he avers is not true. He points specifically to Hearing Exhibit (HE) I as an example of a document he does not have; however, HE I is an email chain with the latest response sent from Applicant to the Judge and the Government on September 17, 2023, regarding his post-hearing submission, the status of several of his debts, and his case generally. Because Applicant drafted and sent this document, any argument that he never received it is without merit. The case file also includes: the SOR issued to Applicant and dated October 26, 2022; Applicant's November 15 and 28, 2022, SOR responses; Notice of Hearing and Prehearing Guidance issued to both Applicant and the Government on July 21, 2023; Case Management Order issued to both Applicant and the Government on August 8, 2023; Government Exhibits (GE) 1 through 6, which were provided to Applicant by letter dated December 30, 2022; Applicant Exhibits (AE) A through C, which he offered into evidence during his security clearance hearing; and AE D through G, which Applicant offered into evidence after the hearing by email dated September 15, 2023. The record reflects that Applicant either received or himself provided all documents contained in his case file, thereby relieving any concern that he did not receive any document in the file.

Applicant also challenges several of the Judge's factual findings. For example, he contends that he did not submit a security clearance application on December 15, 2020; however, the evidence reflects that Applicant electronically certified an Electronic Questionnaire for Investigations Processing, also known as a security clearance application, on the date identified. *See* GE 1 at 54. Other of the Judge's findings, such as that Applicant is 52 years old when he is actually 53 or that he earned his bachelor's degree in May 2020 when it was actually in May 2010, were erroneous; however, viewed in light of the record as a whole, such errors are harmless because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 10-01846 at 3 (App. Bd. Sep. 13, 2011).

Next, Applicant takes issue with the number of questions asked by the Judge and Government, noting that, "other than the administrative procedural questions I was very surprised that [the Judge] did not ask more than 2 questions about my information in this case" and that neither the Judge nor the Government "asked any questions about the divorce/adoption process that I and my current wife went through of which delayed me from further paying down any more debts." Appeal Brief at 1, 2. In DOHA proceedings, once the Government has met its burden of proving controverted facts, the burden shifts to the applicant to present evidence rebutting or demonstrating extenuation, mitigation, or changed circumstances sufficient to overcome the concerns raised by the SOR. Directive ¶¶ E3.1.14, E3.1.15. It is neither the Judge's nor the Government's duty to seek additional mitigating evidence or undertake further investigation of the concerns raised in an SOR. *See* ISCR Case No. 15-08885 at 2-3 (App. Bd. Jun. 21, 2017). Rather, the applicant bears the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive ¶ E3.1.15.

Finally, Applicant contends that several of the debts found adversely were actually paid, as documented by his credit report. The debt alleged at SOR ¶ 1.h, however, continues to report as outstanding and charged off. *See* AE B at 24. On the other hand, Applicant's argument as it pertains to the debts alleged at SOR ¶¶ 1.c and 1.d has some merit. The Judge found that, although

Applicant testified that he paid the debts at SOR ¶¶ 1.c and 1.d, his credit reports continue to reflect that the accounts are unresolved. Decision at 3. Applicant is correct that, contrary to the Judge’s adverse findings, his most recent credit report reflects that the collection account at SOR ¶ 1.c appears to have been paid in December 2022. *See* AE B at 110-112.¹ Similarly, the charged off debt at SOR ¶ 1.d appears to have been paid in November 2022. *Id.* at 13-15. That being said, the errors concerning two debts totaling less than \$2,000 were harmless considering the magnitude of Applicant’s remaining financial delinquencies that totaled over \$138,000.²

The balance of Applicant’s appeal, including his argument that the Judge failed to give adequate weight to the mitigating factors and Whole-Person Concept, amounts to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to demonstrate 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 rebutted the presumption that the Judge considered all the evidence in the record, nor has he established that the Judge’s conclusions were arbitrary and capricious.

Applicant has not established that the Judge committed harmful error. 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).

¹ While the Judge erred in this specific finding, that error appears to have resulted from Applicant’s credit report showing that he continues to owe another, unalleged debt to the same creditor that has been placed for collection for \$984. *Id.* at 107-109.

² In addition to the three debts addressed, above, Applicant also argues that those alleged at SOR ¶¶ 1.e and 1.f have been paid. The Judge found favorably on these two debts, and therefore Applicant’s argument regarding them is moot.

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
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