



**DEPARTMENT OF DEFENSE**  
**DEFENSE LEGAL SERVICES AGENCY**  
**DEFENSE OFFICE OF HEARINGS AND APPEALS**  
**APPEAL BOARD**  
**POST OFFICE BOX 3656**  
**ARLINGTON, VIRGINIA 22203**  
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Date: December 19, 2023

In the matter of:	)	
	)	
	)	
-----	)	ISCR Case No. 22-02182
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 18, 2023, 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 Jun. 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision based on the administrative record without a hearing. On October 5, 2023, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant has 14 delinquent debts. In responding to the SOR, Applicant admitted nine allegations and generally asserted that she was unaware of the remaining debts, while providing explanations for each. The Judge found against Applicant on nine of the debts while deciding in her favor on five allegations. In summarizing his decision, the Judge held

that nine debts totaling about \$8,910 were not mitigated, that Applicant still has significant, admitted past-due debts, and that she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information. Decision at 5-6.

Applicant's appeal brief suggests that the Judge may not have seen her response to the Government's file of relevant material (FORM), where she explained the current status of each debt, and that he did not appropriately consider the length of her employment as a Government contractor. Additionally, she provides new evidence to explain past assertions or to show subsequent resolution of debts. Finally, she argues that her actions to resolve her financial delinquencies support reconsideration of her clearance eligibility. Appeal Brief at 1-4.

First, we note the decision acknowledges and admits Applicant's May 12, 2023, response to the FORM, and the Judge's findings of fact reflect items that are contained in the response. Next, the Judge noted that Applicant "has worked for a Federal Contractor since October of 2019." Decision at 2. This reflects her current employment as listed in her security clearance application (SCA). Government Exhibit 2. There is no reason to believe that the Judge did not recognize or consider her past employment with Government contractors, as reflected in her SCA. There is a rebuttable presumption that the Administrative Judge considered all of the record evidence, and the appealing party has a heavy burden when trying to rebut that presumption. *See, e.g.*, ISCR Case No. 18-00110 at 5 (App. Bd. Mar. 31, 2020).

Finally, Applicant presented on appeal revised explanations and new evidence submitted to show her efforts to resolve debts. Much of this evidence was not presented in response to the SOR or the FORM and was unavailable to the Judge when he issued his decision. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

It should be understood that once the Government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, 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).

The Appeal Board does not review cases *de novo*. The Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Directive ¶ E3.1.32. Because Applicant has not alleged such a harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

**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