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: December 19, 2023

In the matter of:	)	
	)	
-----	)	ISCR Case No. 21-02121
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 23, 2021, 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) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On October 12, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Eric H. Borgstrom denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged nine delinquent debts totaling approximately $80,100. The Judge found for Applicant on two debts and against him on the remaining seven, which total approximately $72,100. Applicant raises the following issues on appeal—whether the Judge erred in his factual findings, failed to properly consider all available evidence, and misapplied the mitigating conditions and Whole Person concept, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

In his late fifties, Applicant has been employed full time with a DoD contractor since 1996. Twice divorced, he has lived with his current partner for over 20 years. Since 2015, Applicant has had significant health issues requiring surgeries, hospitalizations, and periods in which he could not work. He received full pay during these periods, however, and estimates his total out-of-pocket expenses as under $10,000. At some point between late 2017 and late 2019, Applicant met with an Office of Personnel Management (OPM) investigator regarding his security clearance application. The investigator made Applicant aware of several delinquent accounts, including six that were ultimately alleged in the SOR.

All debts alleged on the SOR went into collections or were charged off in October or November 2017. For three of the alleged credit card debts (SOR ¶¶ 1.a, 1.b, and 1.d), Applicant acknowledged that he was made aware of the debts during his OPM interview. He denies the debts and claims to have disputed them, but he did not submit documentary evidence of any efforts to dispute the accounts. He has not contacted any of these creditors, one of which is his primary bank. Regarding a fourth debt (SOR ¶ 1.e), Applicant claimed in his June 2021 response to Government interrogatories to have paid the debt, but he later claimed in his Answer and at hearing to be unfamiliar with the account. He has neither contacted this creditor nor disputed this debt.

The remaining three debts (SOR ¶¶ 1.g, 1.h, and 1.i) are all with the same creditor and total approximately $45,100. At hearing, Applicant testified that he had originally disputed the three accounts but that he later admitted them and retained an attorney to negotiate settlements. Although he testified that two of the three debts (SOR ¶¶ 1.g and 1.h) were settled and paid in late 2021, he provided no evidence of settlement agreements or payments. Applicant also testified that he was currently making monthly payments of $321 on SOR ¶ 1.i and provided a copy of a check, but there is insufficient account information to link the check to an alleged debt. Although Applicant provided an undated letter from an attorney handling settlement negotiations for some of his debts, the information provided in the letter does not confirm that the settled accounts are the same as the alleged debts. Moreover, the letter does not indicate when settlement agreements were reached and what, if any, payments have been made.

Applicant testified that he had been informed about an OPM breach in 2015, but he has never been notified of any identity theft involving his accounts and has never filed any identity theft reports with law enforcement or credit bureaus. Together, Applicant and his partner earned approximately $315,000 annually. Applicant testified that he had the assets to resolve all of the alleged debts, but he did not believe them to be his.

No mitigating conditions fully apply. Although Applicant's medical issues were circumstances beyond his control, he has failed to establish that he acted responsibly in the wake of these events to address and resolve his delinquent accounts, as he has taken no action on four debts and failed to provide corroborating evidence as to his claimed settlement payments on the other three. Applicant does not have a reasonable plan to resolve the accounts. For the four debts that he disputes (SOR ¶¶ 1.a, 1.b, 1.d, and 1.e), Applicant has not directly contacted the creditors, not engaged his attorney to determine whether these debts are legitimate, and not provided proof to substantiate the basis for his dispute.

Discussion

Through counsel, Applicant asserts that "the Administrative Judge improperly applied factual findings that were unsupported in the record." Appeal Brief at 7. It is not entirely clear to what Applicant is referring, as he then cites largely to the Judge's analysis and application of mitigating conditions, rather than to findings of fact. We have previously noted that there is a difference between errors in a judge's findings of fact and errors in the conclusions drawn therefrom. *See* ISCR Case No. 22-00822 at 3 (App. Bd. Jul. 5, 2023); ISCR Case No. 23-00001 at 4 (App. Bd. Sep. 28, 2023). Applicant's purported factual errors are simply challenges to the Judge's weighing of the evidence and are therefore addressed along with his other arguments. The only reference to what would arguably be a finding of fact is the Judge's purported "affirmative statement that the Applicant has not hired a professional to assist him in settling and resolving the debts." *Id.* at 8. However, counsel provides no cite to such a statement in the Judge's decision and our review reveals none. This assignment of error is without merit.

More broadly, Applicant contends the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all of the evidence in mitigation. For example, Applicant argues that the Judge "failed to consider that [Applicant] was unwilling to satisfy the debts because they were not accrued by him" and that he did not "even consider the impact of the OPM Data Breach in June 2015 other than to dismiss it." *Id*. Contrary to Applicant's argument, the Judge detailed Applicant's reference to the OPM data breach and his assertion that some of the debts were not his. As the Judge concluded, however, Applicant failed to meet the fundamental requirements of AG ¶ 20(e) in that he "neither provided documented proof to substantiate the basis for his dispute nor provided evidence of actions he has taken to resolve the issue." Decision at 9.

The remainder of Applicant's brief is fundamentally an argument that the Judge misweighed the evidence. None of Applicant's arguments, however, 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. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

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).

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

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

Signed: Gregg A Cervi
Gregg A Cervi
Administrative Judge
Member, Appeal Board