DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: January 30, 2024

In the matter of:	)
-----	) ISCR Case No. 22-01033
Applicant for Security Clearance	)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Carroll J. Connelley, Esq., Department Counsel
Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 8, 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 November 6, 2023, Defense Office of Hearings and Appeals Administrative Judge Philip J. Katauskas granted Applicant security clearance eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 13 financial concerns, including delinquent debt totaling approximately $29,000 and that Applicant's property was foreclosed upon in about 2019 due to his inability to pay his monthly mortgage payment. In his response to the SOR, Applicant admitted all of the allegations with limited explanation.

Judge's Findings and Analysis

Applicant is in his early 50s. He has one adult child from his former marriage and a minor child with his cohabitant. Applicant served in the military from 1990 until his honorable discharge in 2014, during which time he held a security clearance. In 2010, his clearance was favorably adjudicated with a caution to address his delinquent debts. Applicant has worked for a defense contractor since December 2016. His current monthly income from all sources is approximately $8,700 and he has a net remainder of about $3,900 each month after all other expenses are paid, which he provides to his cohabitant.

Applicant explained that he was working with his creditors and a debt repair company to address nine of the 12 delinquent accounts, and that he was found liable for the mortgage account pursuant to his divorce. Additionally, having given his former wife power of attorney while he was deployed in the military, he asserted that he was unaware of most of the SOR debts until he applied for a loan and learned about his low credit score. Applicant's documentation reflected that he paid the credit repair company four $109 payments from April to July 2022; however, he learned that the company would not resolve his debts in the way he expected and he stopped working with them after July 2022.

In 2021 and twice again after receiving his SOR in June or July 2022, Applicant contacted nine of his creditors (SOR ¶¶ 1.a-1.f, 1.i-1.k) to request settlements, but only one of them ultimately made a settlement offer and the other eight required lump sum payments. He plans to pay off each account when he has the money to pay each in full. Applicant also reached a payment plan with another creditor (SOR ¶ 1.h) but had not yet received the written agreement. Additionally, despite testifying that a medical debt (SOR ¶ 1.l) had been resolved, Applicant produced no documentation to support that claim. The Judge found that the foregoing 11 debts were unresolved.

Applicant contacted another creditor (SOR ¶ 1.g) days before his security clearance hearing and established a plan under which he would pay approximately $120 per month for 12 months beginning August 2023 – the month after the hearing – to satisfy the full balance. The Judge found that this debt was being resolved. The Judge also found that Applicant's foreclosure (SOR ¶ 1.m) was resolved by virtue of his testimony that the home sold for more than was owed on the loan, which was corroborated by documentation.

The Judge found that Applicant's debts were "'largely' – if not wholly – beyond his control" and that he "acted responsibly in confronting his financial situation," and thereby concluded that mitigating conditions AG ¶¶ 20(b) and 20(d) applied to Applicant's financial concerns. Decision at 7.

Discussion

On appeal, the Government argues that the Judge's application of the Guideline F mitigating conditions and his whole-person analysis were arbitrary, capricious, and not supported by the record evidence. For the reasons set forth below, we reverse the Judge's decision.

A Judge's decision can be found to be arbitrary or capricious if "it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion." ISCR Case No. 97-0184 at 5, n.3 (App. Bd. Jun. 16, 1998) (citing *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)).

The Government first challenges the Judge's application of AG ¶ 20(d) and contends that "there is insufficient evidence to find that Applicant has taken significant steps to effectuate a 'reasonable plan' to resolve his debts." Appeal Brief at 8. AG ¶ 20(d) affords mitigation when "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." The Board has held that a "good-faith effort to repay" requires that the applicant demonstrate a "meaningful financial track record," which "necessarily includes evidence of actual debt reduction through payment of debts." ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007).

In concluding that AG ¶ 20(d) applied in this case, the Judge appears to have relied entirely on Applicant's four payments to the credit repair company, which he discontinued a year prior to his security clearance hearing, and Applicant's plan to resolve SOR ¶ 1.g, which was established only days before his hearing, would not actually begin until the month after the hearing, and would satisfy about $1,500 of the SOR's $29,000 in delinquent debt. Applicant's short-lived efforts to repair his credit and his promise to take future action on a single debt do not amount to a meaningful track record or to actual debt reduction sufficient to invoke AG ¶ 20(d), and the Judge's application of the condition is unsustainable.

The Government also challenges the Judge's application of AG ¶ 20(b), which affords mitigation upon finding that the conditions that resulted in the financial problem were largely beyond the person's control *and* that he acted responsibly under the circumstances. The Judge found that "Applicant's indebtedness was incurred by his then wife, while he was in the [military] on deployment," and that he acted responsibly when he contacted some of his creditors to request settlements, albeit unsuccessfully, and temporarily retained a credit repair company. Decision at 6, 7. The Government argues that this finding failed to consider important record evidence, including that Applicant was assigned responsibility for many of the delinquencies in his February 2018 divorce and that he continued to incur new delinquencies, including five debts alleged in the SOR, after the divorce was finalized. Additionally, Applicant discussed the debts ultimately alleged in his SOR during his October 2021 clearance interview, at which time he

expressed his plan "to pay off each account when he has the money to pay the account in full." Appeal Brief at 9. Despite this asserted plan, however, Applicant declined to use his monthly net remainder of approximately $3,900 – which sum is greater than the amounts owed on ten of the SOR debts – to make any lump sum payments, and also failed to establish any repayment plan until the week of his July 2023 hearing. Considering the foregoing, we conclude that the record in this case does not support application of AG ¶ 20(b).

The standard applicable in security clearance decisions 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). From our review of the record, there was insufficient evidence for the Judge to conclude that "no questions [exist] about [Applicant's] eligibility and suitability for a security clearance." Decision at 8. The Judge's decision runs contrary to the weight of the record evidence, and was therefore arbitrary, capricious, and contrary to law. The record, viewed as a whole, is not sufficient to mitigate the Government's security concerns under *Egan*. Therefore, the decision is not sustainable.

Order

The decision is **REVERSED**.

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