



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: January 22, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 22-02544
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 29, 2023, 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). Applicant requested a hearing. On September 29, 2023, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleges seven delinquent consumer debts totaling approximately \$67,200, two mortgage accounts that are alleged to be past due, and an unpaid civil judgment in the approximate amount of \$1,511,000. In his response to the SOR, Applicant admitted each of the ten allegations, and the Judge found adversely to him on all allegations. On appeal, Applicant argues that the Judge “failed to instruct [Applicant] on the necessity of documentation to support mitigation factors” and failed to conduct a proper analysis of the mitigating conditions and whole person. Appeal Brief (AB) at 7. Consistent with the following, we affirm the Judge’s decision.

Applicant is in his mid-fifties and divorced, although his ex-wife resides with him. They have no children. Applicant served in the military from approximately 1986 to 1993 and was honorably discharged. Following military service, he completed an electrical apprenticeship program and, a few years later, started his own company with his stepfather. Their business was successful for approximately 20 years—until 2017—at which time Applicant was forced to close the company. The consumer debts arise primarily from Applicant’s use of credit cards as he closed his business and transitioned to new employment. The judgment of approximately \$1.5 million arises from a successful lawsuit brought by his stepfather alleging a breach of fiduciary duty in their partnership.

At hearing, Applicant denied any wrongdoing in how he handled his company’s affairs and stated that he has no intent to pay the judgment to his stepfather. Regarding the seven alleged consumer debts, Applicant confirmed that they remain outstanding. Regarding his delinquent mortgage accounts, however, Applicant testified that he had made payments and progress. For a mortgage account on his primary residence that was past due in the approximate amount of \$30,600, Applicant testified that he is in compliance with a repayment agreement established in August 2022. Regarding the delinquent mortgage account on his second home with a balance of approximately \$2,000, Applicant testified that he had completely paid the account; however, the Judge noted, “he has provided no documentary evidence to substantiate his testimony.” Decision at 6. In fact, she noted, “Applicant has submitted no documentary evidence at all.” *Id.*

On appeal, Applicant has not challenged any of the Judge’s specific findings of fact. Instead, his Counsel raises what he characterizes as a due process concern. AB at 10. Throughout his brief, Counsel repeatedly argues that Applicant – who was *pro se* at the hearing – did not understand his evidentiary burden prior to the hearing, that the Judge failed to explain it to him until the end of the hearing, and that she then “chose to close the record at the end of the hearing . . . without ever informing [Applicant] that the record could remain open, an option open to all applicants.” *Id.* at 7. For the reasons detailed below, we find this argument to be entirely without merit.

First, the record confirms that Applicant received a copy of both the Directive and the DOHA Hearing Office’s prehearing guidance on May 24, 2023, a full three months prior to his hearing. The Directive places the burden for presenting evidence in mitigation squarely on the applicant: “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. Counsel argues that Applicant “did not know or understand how to prepare evidence for his case or the legal burdens that he would have to overcome.” AB at 9. Even *pro se* applicants are expected to take reasonable steps in protecting their rights. *See, e.g.*, ISCR Case No. 20-01997 at 3 (App. Bd. Sep. 14, 2022). Moreover, contrary to Counsel’s argument that the Judge “failed to instruct [Applicant] on the necessity of documentation to support mitigation factors,” a judge is not obligated to advise an applicant on how to exercise his rights or make his case in mitigation. *Id.*

Second, Counsel’s argument that Applicant was deprived of the opportunity to submit corroborating documents is directly undermined by Applicant’s own testimony. Because Applicant admitted to making no payments on his judgment or delinquent consumer debts, Counsel’s argument pertains exclusively to Applicant’s testimony that he had made payments on the two delinquent mortgage accounts and had paid one mortgage off entirely. At the end of Applicant’s testimony, the Judge inquired whether he had any documents with him at hearing that he wanted to place into evidence. Applicant replied: “No. There’s no documents.” Tr. at 65. Later, the Judge asked specifically whether Applicant had any documentation to support his testimony regarding either mortgage account, to which Applicant replied, “Well, it’s not on my Credit Report anymore.” *Id.* at 68. Having been advised by Applicant that he had no corroborating documents, the Judge closed the hearing shortly thereafter without offering to hold the record open. Given his testimony that he had no documents, Applicant is ill-positioned now to argue that he was somehow deprived of his right to submit documents. Applicant may be dissatisfied with the outcome of his hearing, but we find no reason to conclude that this outcome resulted from a deprivation of Applicant’s due process rights or that Applicant did not have adequate notice of those rights.

The remainder of Applicant’s brief is fundamentally an argument that the Judge misweighed the evidence in conducting her mitigation and whole-person analyses. None of Applicant’s arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate that 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 her whole-person analysis by considering all evidence of record in reaching her 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: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board