



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: April 22, 2024

In the matter of:)	
)	
)	
-----)	ADP Case No. 22-00180
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Rhett Petcher, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 10, 2022, 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) of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 23, 2024, Defense Office of Hearings and Appeals Administrative Judge Ross D. Hyams granted Applicant’s request for a trustworthiness designation. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 11 financial concerns which reflect a mix of medical and consumer debt totaling approximately \$51,000. An amendment to the SOR alleged under Guideline F that Applicant inappropriately took cash advances for personal use on a government credit card. In responding to the allegations, Applicant admitted some while denying others. The Judge found in favor of Applicant as to all allegations.

In his appeal brief, counsel for the Government does not challenge any of the Judge's specific findings of fact. Rather, he contends that the Judge failed to adhere to Executive Order 10865 and the Directive by not adequately considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. Essentially, the Government argues that the Judge erred because even if Applicant's financial problems were caused by conditions beyond her control, she had not acted reasonably and responsibly in addressing them. However, our review of the Judge's decision confirms that he considered all relevant issues and properly applied the mitigating conditions. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in her late 40s, twice divorced, and is the mother of two adult children and a minor adopted child. She was on active duty in the Navy from 2004 – 2016 and was honorably discharged. She was financially stable until 2012 when she entered into legal proceedings to gain custody of her two then-minor children. Applicant financed this process with a \$10,000 loan which she timely repaid. However, the additional expenses of gaining custody of her children, coupled with payments on the loan, created financial stress. At about that same time, her teenage son became a father and Applicant contributed to help support that child. Collectively these events led to the delinquent consumer debt alleged in the SOR. Facing financial pressures, in 2016 Applicant took cash advances using her government-issued credit card, even though she was aware that personal use of the credit card was not permitted. She paid the credit card bills when due, and the Navy incurred no costs. Applicant was counseled for having misused the credit card, and she has expressed remorse for this conduct.

Upon leaving the Navy in April 2016, Applicant moved to another state and was unemployed until January 2018, at which time she obtained her current job as an aircraft mechanic. She initially earned approximately \$72,000 a year and was maintaining payments on some of her debts. However, she accumulated medical co-pay debt as a result of five surgeries. During the recuperation period from each surgery, her income was reduced by approximately 40%. Even though her salary increased over time to approximately \$93,000, Applicant was unable to keep up with payments. Also during this period, Applicant incurred approximately \$20,000 in legal and attorney fees as a result of her efforts to adopt her son's daughter. She paid these expenses, but these efforts diverted funds from her ability to pay other debts. Subsequent to issuance of the SOR, Applicant re-engaged with some of her creditors and created payment plans. However, her most recent surgery again limited her income and impacted her ability to make payments.

The Judge concluded that these circumstances were beyond Applicant's control, that she acted responsibly under the circumstances and has a plan to address her delinquencies.

Discussion

The crux of the Government's appellate argument is that it was error for the Judge to have concluded that Applicant made a good-faith effort to address her debts in light of the fact that she contacted creditors only after receiving the SOR, resolved only two small debts, and has been

unable to make payments on any others. The Government argues that this amounts to a “*de minimis*” effort and not “substantial steps to repay,” as the Judge had concluded.

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: 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. *See, e.g.*, ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. *See, e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). The scope of Guideline F encompasses not only an Applicant's current financial situation, but also extends to his or her financial history. As a general rule, an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. *See, e.g.*, ISCR Case No. 09-08462 at 4 (App. Bd. May 31, 2011). However, an applicant must act responsibly given his or her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct even if it may only provide for the payment of debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). What constitutes responsible behavior depends on the facts of a given case and the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern. ISCR Case No. 09-08462 at 4. Relevant to the equation is an assessment as to whether an applicant acted responsibly given her limited resources *See, e.g.*, ISCR Case No. 08-06567 at 3-4 (App. Bd. Oct 29, 2009).

In essence, the Government is advocating for an alternative weighing of the evidence. However, 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 conclude 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. 7, 2007). Whether or not Applicant's efforts were “substantial steps to repay her debts” as the Judge concluded is a subjective determination and well within the Judge's discretion to decide. The Judge considered that Applicant's poor financial condition originated from unemployment, legal bills attendant to custody and adoption proceedings, and medical bills, all of which were outside her control. None of this reflects irresponsible or frivolous spending. The Judge thoroughly addressed Applicant's circumstances as they impacted her limited efforts to resolve her debts and reasonably concluded that she has not been financially irresponsible considering that “at times her ability to [address her debts] was interrupted by medical expenses and reduced income due to disability.” Decision at 6.

We have considered the entirety of the arguments contained in Government's appeal brief. The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S.

156, 168 (1962)). The Judge’s favorable decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), regarding security clearances: such a determination “may be granted only when ‘clearly consistent with the interests of the national security.’” *See, e.g.*, ADP Case No. 19-01882 at 2 (App. Bd. Oct. 26, 2020). *See also* *Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*. None of the Government’s arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record, nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

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: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board