



**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: April 4, 2024

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 11, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guidelines J (Criminal Conduct), F (Financial Considerations), and E (Personal Conduct) 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 December 26, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Charles C. Hale denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Under Guideline J, the SOR alleges various charges, arrests, and criminal convictions between 2015 and 2018. Under Guideline F, the SOR alleges five bankruptcy filings, two Chapter

7 bankruptcy discharges, a state judgment for converting funds held in trust for the Applicant's adult daughter for his own use, an indebtedness for alimony, and financial support for foreign nationals. Allegations under Guidelines J and F were cross alleged under Guideline E. Applicant admitted all of the Guideline J and F allegations with explanations, but he did not answer the Guideline E SOR allegation. The Judge found in favor of Applicant on two criminal allegations (SOR ¶¶ 1.a and 1.d) and on the alimony debt allegation (SOR ¶ 2.g), and against him on the remaining SOR allegations. The favorable findings will not be discussed herein.

### **The Judge's Findings of Fact and Analysis**

Applicant, who is in his late sixties, holds two bachelor's degrees. He married in 1981, separated in 2015, and divorced in 2020. The couple has one child, now in her thirties, who has developmental issues. Applicant remarried a citizen of another country in 2021 and has a stepchild from this marriage. His wife resides in a property he owns in another country, and he spends about half of his time there. Applicant held a security clearance for about 30 years until it lapsed in 2018.

Applicant was convicted of driving under the influence (DUI) in August 2016 (SOR ¶ 1.b). He was convicted in 2017 for driving on a suspended license. He claimed his ignition interlock device was not working reliably so he decided to take a period of license suspension in its place. He failed to submit evidence of such, but also admitted to driving with his suspended license (SOR ¶ 1.c). In 2018, he was charged with felony fraud and received probation before judgment. He explained that he entered an Alford plea and received a fine, community service, and an agreement that the matter would be expunged from his record. (SOR ¶ 1.e.)

Under Guideline F, the SOR alleged that Applicant filed five bankruptcy petitions. Three were dismissed, and two resulted in discharges in 2005 and 2018 (SOR ¶¶ 2.b - 2.e). Applicant noted that he was granted a security clearance in 2005 with a bankruptcy on his record. He said that he used Chapter 7 bankruptcy to clear some debts. Applicant explained that when his wife left their home in 2015, she "dumped" all financial responsibility on him and refused to work, so he pursued bankruptcy to put them in the best financial position. He testified that "after the marriage and the relationship was gone, I just said to hell with everything. I'm going to let everything go and move on with my life and establish a new life for myself." Decision at 2; Tr. at 80, 81.

In two court actions, Applicant was ordered to pay over \$168,000, including a judgment for \$72,600 for wrongfully converting funds held for his disabled adult daughter (SOR ¶ 2.f). He admitted to comingling her accounts with his investment accounts, which sustained losses he could not cover. He testified that he never provided the court with "a sufficient explanation, and I can't provide a sufficient explanation here today." Decision at 4; Tr. at 96. Applicant is repaying the alimony arrears alleged in SOR ¶ 2.g, in accordance with the divorce decree and court order. Despite his history of financial difficulties, he provided about \$54,000 in financial support to foreign nationals he dated between 2015 and 2020 (SOR ¶ 2.h).

Applicant attributed the SOR allegations directly or indirectly to events surrounding his divorce from his wife of 34 years. He described the divorce as a "five-year acrimonious,

destructive, intense, bitter, and litigious divorce.” Decision at 4; Tr. at 14. He testified to his changed circumstances and happy marriage. Decision at 4; Answer; Tr. at 102.

With respect to the criminal allegations under Guideline J, the Judge found for Applicant on an allegation that he was charged with domestic violence and an allegation that a warrant was issued for his arrest. On the remaining allegations, the Judge acknowledged the stress of Applicant’s divorce and the passage of time since his last criminal incident in 2018, but nevertheless held that no mitigation applies as his “conduct demonstrates his willingness to act for his own benefit despite the illegality of his conduct.” Decision at 6.

Under Guideline F, the Judge held that, except for the delinquent alimony allegation, no mitigating conditions applied because “Applicant’s financial problems are recent and ongoing and have recurred over a long period of time.” *Id.* at 8. Although his compliance with court orders is “positive information,” Applicant’s history of debt and bankruptcy makes it too soon to conclude that his financial problems are under control. *Id.* Additionally, despite Applicant’s ex-wife’s excessive spending and divorce, Applicant did not act responsibly under the circumstances given his actions involving his daughter’s account and his financial support for foreign nationals. Applicant’s repeated resort to bankruptcy protection does not constitute responsible action and does not support his claim that he initiated prompt, good-faith efforts to pay or otherwise resolve his debts. Applicant did not show that he embarked on a systematic, reliable effort to improve his financial management in a way that inspires confidence that he will not experience financial problems in the future given his actions involving his daughter and financial support for foreign nationals. *Id.*

Under Guideline E, the Judge held that “Applicant’s repeated instances of criminal conduct over the past seven years, and his lack of discretion in handling his finances and the use of his disabled daughter’s financial account as a means to resolve his financial challenges undermine confidence in [his] judgment.” His breach of his obligation to his daughter and long history of poor management of his personal finances remain a security concern and, in addition to his criminal conduct, relate to a broader concern about his poor judgment and inability or unwillingness to abide by rules and procedures. *Id.* at 9. In his whole person analysis, the Judge incorporated his findings and conclusions under Guidelines J, F, and E.

## **Discussion**

Applicant argues that the Judge erred in misstating facts and failed to comply with the Directive by not properly weighing the evidence, mitigating conditions, and Whole-Person Concept. We turn first to his argument that the Judge erred in his findings of fact. Applicant contends that he holds a master’s degree and a bachelor’s degree, rather than two bachelor’s degrees as noted by the Judge. Any error in this regard is harmless as it constitutes background information and did not weigh unfavorably on the Judge’s evaluation of the evidence.

Applicant next challenges the Judge’s statement that Applicant “acknowledges he was convicted of felony fraud,” arguing that he was never convicted of fraud and never acknowledged

the same. This comment by the Judge was in the context of a discussion regarding a warrant for Applicant's arrest (SOR ¶ 1.d.), and we note that the Judge found in Applicant's favor on this allegation. In discussing the allegation of felony fraud (SOR ¶ 1.e.), the Judge found facts that are amply supported by the record and undisputed by Applicant: "Applicant was charged with felony fraud and received probation before judgment. He explained that he entered an Alford plea and received a fine, community service, and an agreement that the matter would be expunged from his record." *Id.* at 3. To the extent that the Judge may have mis-stated a fact in his discussion of SOR ¶ 1.d., we conclude that any error is harmless as not outcome-dispositive. Additionally, Applicant argues that the Judge erred with regard to facts concerning whether Applicant had an interlock device removed from his car. It appears that Applicant misread the Judge's decision. The record supports the Judge's findings on this collateral issue.

In his final argument of the Judge's findings, Applicant argues that he is not a criminal, that he has never engaged in criminal activity, and that his record is clean. However, the record evidence shows that Applicant has a history of criminal conduct, with the last criminal charge — a felony — occurring in 2018 and resulting in an Alford<sup>1</sup> plea, probation before judgment, a fine, and community service.<sup>2</sup>

Applicant also argues that he previously held security clearances, that his SOR transgressions happened because of his divorce, that he was a respected member of his community before the divorce, and that he has since reestablished his life and finances. Appeal Brief (AB) at 1–3. These arguments amount to a disagreement with the Judge's weighing of the evidence, which 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* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Possession of a previously granted clearance does not give rise to any right or vested interest, nor does any favorable clearance decision preclude the Government from reassessing a person's security eligibility in light of current circumstances. ISCR Case No. 03-24144 at 6 (App. Bd. Dec. 6, 2005).

Finally, Applicant supplemented the record with additional evidence of his financial status and argues that he complied with the clearance process, pointing to his personal subject interview (PSI) "conclusion" that "nothing in his (my) background or lifestyle that would allow me to be blackmailed or coerced in any way, domestic incidents, financial condition, foreign travel issues, ... etc." AB at 4. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. With respect to Applicant's PSI summary, we note that the investigating officer's comments summarize Applicant's answers during the interview. They do not constitute

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970) (A court may accept a defendant's guilty plea even though the defendant also denies guilt.).

<sup>2</sup> *See* ISCR Case No. 07-03307 at 4-5 (App. Bd. Sep. 26, 2008) (Appeal Board sustained administrative judge's conclusion that a probable cause arrest affidavit provided sufficient facts to support application of Guideline J Disqualifying Conditions 31(a) and (c) where the applicant entered an Alford guilty plea). *See also*, ISCR Case No. 02-03248 (App. Bd. Apr. 27, 2005) ("The doctrine of collateral estoppel also applies if an applicant's conviction is based on an Alford plea. *See, e.g.*, ISCR Case No. 96-0525 (June 17, 1997) at 2-3.")

the investigating officer’s considered opinion as to Applicant’s worthiness for a clearance. In any event, even if an investigator provided such an opinion, it would not bind the DoD in its evaluation of an applicant’s case. *See, e.g.*, ISCR Case No. 19-02108 at 3 (App. Bd. Oct. 21, 2020).

None of Applicant’s arguments 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.

Applicant failed to establish the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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: James B. Norman

James B. Norman  
Administrative Judge  
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board