



**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 23, 2024

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In the matter of:	)	
	)	
	)	
-----	)	ADP Case No. 23-00547
	)	
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 July 12, 2023, 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 15, 2024, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 26 delinquent debts totaling approximately \$30,000. The Judge found in favor of Applicant on two allegations and against her on the remaining allegations.

In her appeal brief, Applicant points out factual errors in the Judge’s decision and reasserts the reasons why she should have been granted eligibility to hold a public trust position. Consistent with the following, we affirm.

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

Applicant is in her late 40s and is employed by a defense contractor in a public trust position. She married in 1995 and divorced in 1999. She remarried in 2002 and separated in 2018 after nursing her husband back to health following three strokes in 2016. She holds a bachelor's and three master's degrees. She has previously been employed by defense contractors but has never held a public trust position.

Applicant has struggled with the management of her finances for many years. She filed Chapter 13 bankruptcy in 1992, which was dismissed. She filed Chapter 7 bankruptcies in 1997 and 2007. In her 2007 petition, she reported \$18,581 in personal property; no real property; and creditors' secured claims of \$13,906; unsecured claims of \$725; and \$86,130 in unsecured non-priority claims. Following each of her bankruptcy petitions, Applicant returned to accumulating debt beyond her ability to manage and control.

Between 2010 and 2021, Applicant accumulated 26 alleged delinquent accounts, and over \$10,000 in debts not alleged in the SOR. Applicant's post-SOR attempts to enlist debt counselors to help her resolve her delinquent accounts never achieved the positive results she hoped for. Neither of these debt service firms were successful in helping her to successfully resolve any of her delinquent SOR accounts or the non-SOR accounts covered in her latest credit report.

Applicant has not provided credible documentation to establish that she has addressed most of her SOR debts. Her commitments to address her unresolved SOR debts represent no more than promises to resolve her debts and are not a viable substitute for a track record of paying debts in a timely manner and otherwise acting in a responsible way. More concerted debt payment initiatives could be expected of her with the income resources available to her from her full-time employment. She acknowledged overspending as a source of her past financial troubles but failed to document any payment initiatives with the bulk of her creditors. Without more, none of the potentially available mitigating conditions can be applied to her situation at this time.

## **Discussion**

In her appeal brief, Applicant claims that the Judge erred in certain background information and did not adequately stress certain other matters in his decision. She stated that her age is 52, not 49 as noted by the Judge, and she separated from her second husband in 2020, not 2018 as noted by the Judge. She notes that she previously held a secret security clearance; she is working with a debt counselor; and she filed bankruptcies in 1992, 1997, and 2007, and listed her bankruptcy claims in greater detail than the Judge's decision. Finally, she argues that she has managed her finances responsibly since 2007 despite a 2021 financial hardship; that she maintains a good credit rating; and that she held security clearances in 2008 and 2017. She states that her past financial difficulties were non-recurring and beyond her control, and that she has been resolving debts with the help of a financial counselor.

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).

Although we agree that the Judge erred with regard to Applicant's age and date of separation from her second husband, these errors are harmless. The Judge did not make inconsistent findings with regard to her past security eligibility or bankruptcy claims.<sup>1</sup> Her remaining assertions detailing reasons why she should receive a favorable decision constitute a disagreement with the weight the Judge assigned to the evidence. The Judge's confusion regarding certain background information is irrelevant to the ultimate findings with regard to Applicant's failure to resolve delinquent debts.

In part, Applicant 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. 12, 2007). 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.

We have often stated that 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).

We have considered the entirety of the arguments contained in Applicant'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.*

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<sup>1</sup> Applicant did not list her past security clearance history in her security clearance application. GE 1.

*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 adverse 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 Applicant’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