



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: May 7, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 23-00563
)	
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 March 22, 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) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing which was held on December 12, 2023. On March 19, 2024, Defense Office of Hearings and Appeals Administrative Judge Candace Le’i Garcia denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the Judge’s decision.

The SOR alleged 14 financial concerns totaling approximately \$30,000, which reflect a mix of medical and consumer debt, as well as delinquent Federal and state tax debt. In his SOR answer, Applicant admitted some debts while denying others. The Judge found nine allegations in favor of Applicant and against him on the others. An in-hearing amendment to the SOR alleged under Guideline E that Applicant wrongfully disposed of a previous employer’s laptop computer; however the Judge found that allegation in Applicant’s favor, and that finding is not under review.

On appeal, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends that the Judge's decision improperly relied upon the delinquency of several student loans despite the fact that those loans were not alleged in the SOR. Our review of the Judge's decision confirms that she 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 34 years old, married, and has a 9-year-old son. After graduating from high school in 2008, he enlisted in the U.S. military and was honorably discharged in April 2012. Subsequent to his discharge he has worked for and been terminated by numerous employers, with some periods of unemployment. He has worked for his current employer since November 2023 and also has accepted a position with another employer. He intends to simultaneously work full-time for both employers. Concurrent with his employment, Applicant attended six colleges at various times since 2010 but has not yet earned a degree. His tuition was paid through the acquisition of approximately \$50,000 in Federal student loans. Repayment of those loans was in forbearance due to a Covid-related emergency relief provision which paused payments, but he was to begin repaying the loans in November 2023. He did not do so.

Applicant has a history of delinquent debts, which he attributes to periods of unemployment and being the sole provider for his family on a minimal income. He acknowledged that he had not managed his finances well and speculated that once he is working two full-time jobs, he will have sufficient income to pay his debts. After issuance of the SOR, Applicant made sporadic, inconsistent efforts at addressing his delinquencies. He entered into an installment agreement with the IRS in April 2023, but made only two payments. In December 2023 he entered into a second installment agreement, but as of the time of the hearing his payments were not yet due. He also entered into an installment agreement with the state tax authority in April 2023, but only made approximately three payments. As with the IRS, he entered into another payment arrangement with the state tax authority in December 2023, but payments had not yet been made. In August 2023, Applicant agreed to an arrangement to pay a delinquent auto loan but he had not made any payments. Similarly, as to the other debts alleged in the SOR that were found against Applicant, the Judge concluded that he either had not made efforts to resolve them or did not provide documentation to corroborate any of his claims of payment or resolution efforts. The Judge also considered the character references submitted by Applicant.

Discussion

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. ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

In addition to the debts alleged in the SOR, Applicant owes approximately \$50,000 in student loan debt. Tr. at 89. At the time the SOR was issued, Applicant's student loans were not delinquent because they were in a temporary forbearance status. However, payment of those loans was to resume beginning in November 2023. Applicant testified that he had not made any required payments but intended to do so at some unspecified time in the future. Tr. at 94 - 95.

A Judge may consider non-alleged conduct (a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. *E.g.*, ISCR Case No. 12-01038 at 3 (App. Bd. Jun. 26, 2013). 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. *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. This includes financial obligations beyond those alleged in the SOR because they are relevant in terms of assessing the context of an applicant's total financial obligations. Nothing in the record or the Judge's decision indicates that she considered the student loans in a manner that is inconsistent with this analytical approach.

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). Until an applicant has a "meaningful financial track record it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). The concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." *Id.* Payment agreements alone amount to promises to pay in the future, which are "not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner." ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 15, 2020). This is particular so in light of a history of entering into agreements and not meeting those obligations. The timing of debt payments also is relevant in evaluating an applicant's case for mitigation, in that an applicant who waits until his clearance is in jeopardy before resolving debts might be lacking in the judgment expected of those with access to classified information. *E.g.* ISCR Case No. 15-01070 at 3 (App. Bd. Mar. 9, 2016). The presence of some favorable or mitigating evidence does not require the Judge to make an overall favorable determination in the face of disqualifying conduct such as Applicant's. *E.g.* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In the absence of a meaningful track record of repayments and only a speculative plan for addressing his debts, it cannot reasonably be suggested that Applicant initiated a good-faith effort to repay creditors or otherwise resolve debts. The Judge's findings are supported by the evidence, and it was not error for her to find that the manner in which Applicant addressed his debts fell short of mitigation.

The remainder of Applicant’s brief advocates for an alternative weighing of the evidence. An applicant’s “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 demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.” ISCR Case No. 06-17409 at 3. Moreover, there is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise, and a bare assertion that the Judge did not consider evidence is not sufficient to rebut that presumption. *E.g.*, ISCR Case No. 19-03344 at 3 (App. Bd. Dec. 21, 2020).

We have considered the entirety of Applicant’s arguments. 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 adverse decision 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: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board