



**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: May 7, 2024

In the matter of:)	
)	
----)	ISCR Case No. 23-01434
)	
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 28, 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). On March 7, 2024, after conducting a hearing, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant has 33 delinquent debts totaling about \$11,800, and a Chapter 7 Bankruptcy discharged in 2014. The Judge found against Applicant’s on all of the SOR allegations. In his appeal brief, Applicant points out factual errors in the Judge’s decision and asserts that the Judge failed to consider relevant evidence in mitigation. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in his early-40s and has been employed by a defense contractor since May 2019. He is married and has three stepchildren. Applicant attributes his financial difficulties to a brief period of unemployment in 2019. He admitted to all of the SOR allegations.

Applicant has significant past-due indebtedness. Although he was unemployed in 2019, his indebtedness is ongoing. He has a history of delinquencies, including a 2014 Chapter 7 bankruptcy discharge of earlier debts, and has not demonstrated that further financial problems are unlikely. No mitigating conditions apply.

Discussion

In his appeal brief, Applicant claims that the Judge erred in certain factual findings with regard to his background, argues for reconsideration of certain efforts he has made to resolve debts, includes additional argument as to the current status of some debts, and raises an allegation of bias.

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).

We agree that the Judge made a factual error in omitting one of Applicant's children, but the error is harmless as it does not likely affect the outcome of the case. ISCR Case No. 19-01431 at 4 (App. Bd. Mar. 31, 2020).

Applicant next asserts that the Judge erred by not giving appropriate weight to a spreadsheet he submitted in mitigation and that he inappropriately characterized Applicant's financial status. Applicant also argues additional considerations for the whole-person analysis. 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. *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. *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. *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).

It is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts. ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010). Moreover, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Additionally, a debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). With regard to additional or clarifying evidence presented on appeal, the Appeal Board is prohibited from considering new evidence on appeal and does not review cases *de novo*. Directive ¶ E3.1.29.

Finally, Applicant raises the possibility that the Judge was biased because of remarks he made about a previous Applicant’s “speech patterns” that made it difficult to understand him. The record is devoid of evidence of the pre-hearing discussion, and Applicant has not raised sufficient evidence of bias to warrant action in his case by the Appeal Board.

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: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board