

Judge's Findings of Fact: The Judge's findings are summarized and quoted below.

Applicant is in her early thirties. After earning her bachelor's degree in 2013, Applicant worked as a receptionist and benefits coordinator and subsequently as an administrative research assistant, and she is currently employed as a recruiting coordinator of engineers.

The four SOR allegations are for state-issued student loans obtained between 2008 and 2011 for which Applicant's parents co-signed. Initially, Applicant's mother, who was employed as a nursery school director, was paying on the student loans. After her death in 2011, Applicant's father, who is retired from state employment, fell behind on paying the loans, and they defaulted at some time. Applicant did not know what the monthly payments were at the time of her mother's death and could not recall when the student loans defaulted as she was living in another state and the correspondence was being sent to her parents.

Applicant stated that she called the state lender a few years after her mother's death but was presented with payment and consolidation options that she could not meet. In 2020, Applicant again contacted the state lender, and they offered three different repayment options for each of the four loans. The proposed settlement agreement would call for a total monthly payment of \$1,200 for the four loans, which Applicant could not afford.

During the December 2023 hearing, Applicant testified that she has been making monthly payments on eight student loans held by a second student loan lender since 2013. Applicant also provided documentation from a third student loan lender indicating that her father is paying \$283 a month on a student loan that is only his responsibility, with an outstanding principal balance of \$5,585. As the Judge noted: "The credit bureau reports show that Applicant pays all her bills in a timely manner except for the listed student loans. She paid off her car loan and is responsible with her finances. Applicant is current on the eight student loans to the second student lender." Decision at 3 (internal cites omitted).

On January 4, 2024, Applicant entered into a settlement agreement with the state lender of the four alleged SOR loans. Under the agreement, the lender agreed to accept \$120,000 without additional interest, conditioned upon repayment of \$500 /month for 240 months beginning on January 15, 2024. After nine consecutive payments have been made, the loans will be considered rehabilitated, thereby removing the defaulted status of the loans from the Applicant's credit report. Applicant made the first \$500 payment on January 3, 2024. In addition to her mother paying on the four listed student loans, Applicant claimed that her father and brother paid on the loans over the years. Regarding her father's payment contribution, Applicant was certain that he made payments, but she did not know how much. On the subject of Applicant's purported payments to the listed student loan debts before the issuance of the SOR in December 2022, she claimed that she and her father have been paying as much as they could each month. She claimed that she made occasional payments to the listed creditors during the pandemic (2020 to 2022). The record shows that Applicant's payments on the listed student loan accounts did not begin until 2023. In that year, she made 11 or 12 monthly payments totaling \$600 to the collection firm representing the listed state lender. Hence, her claims regarding earlier payments are unsupported and therefore not

credible. She has presented no documentation, i.e., bank statements, receipts, or payment ledgers, or documentation from her father or brother to support her claims. The credit bureau reports show no payment activity on the listed accounts from 2018 to January 2023. [*Id.* at 4 (internal cites omitted.)]

Judge’s Analysis: The Judge’s analysis is summarized and quoted below.

The Government’s credit reports confirm that the debts listed in the SOR became delinquent in June 2018 and total approximately \$98,300, establishing both AG ¶ 19(a), an inability to satisfy debts, and AG ¶ 19(c), a history of not meeting financial obligations. AG ¶ 19(b), an unwillingness to satisfy debts regardless of the ability to do so, does not apply based on Applicant’s track record of payments on her eight other student loans.

AG ¶ 20 (a) is not available for mitigation. The student loan accounts were opened between 2008 and 2011. Applicant claimed that she, her father, and her brother paid on the student loans over the years and occasionally during the pandemic between 2020 and 2022. Though the record shows payment activity until 2018, the record shows no evidence of payments on the listed debts at any time by Applicant until 2023, when she began paying \$50 a month on the delinquent loans. The payments did not begin until after she received the SOR in December 2022. Applicant’s lack of evidence addressing the student loans before 2023 continues to cast doubt on her current reliability, trustworthiness and judgment.

Applicant’s failure to pay on the listed delinquent loans cannot be based on employment issues, as she has been continuously employed since 2016. There is no record of any kind of unexpected event that contributed to her delinquent loans. In addition, there is no evidence that she acted responsibly before she received the SOR in December 2022 to address the delinquent loans. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply as Applicant has not had financial counseling. Though there is some evidence that she lives frugally, she did not furnish evidence of financial strategies, i.e., a written budget, or other accounting system, that could continuously enable her to monitor her financial obligations.

While Applicant warrants some mitigation under AG ¶ 20(d) based on the January 2024 settlement agreement, the mitigation due is insufficient to overcome the lack of evidence of loan payments by Applicant before 2023. In addition, based on the figures that she provided regarding her income and expenses, it will be difficult for her to absorb an additional \$500 a month expense for the next 240 months without running a monthly deficit.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish her case in mitigation, an applicant must present a “meaningful track record” of debt repayments that result in debt reduction. While an applicant is not

required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan for debt resolution and has taken significant action to implement the plan. Applicant's year-long record of payments in 2023 and January 2024 settlement is insufficient to overcome the absence of student loan payments by her at any time before 2023, specifically after 2018. AG ¶ 20(d) is unavailable for mitigation because of the absence of a meaningful track record of repayments. [Id. at 6 (internal cites omitted).]

Discussion

On appeal, Applicant highlights that—contrary to the Judge's findings—the record establishes payments on the alleged loans prior to issuance of the SOR. We agree and, for the reasons stated below, reverse the Judge's adverse decision.

When an Administrative Judge's factual findings are challenged, the Board must determine whether “[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, E3.1.32.1. The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole. ISCR Case No. 02-12199 at 2–3 (App. Bd. Aug. 8, 2005).

A judge's decision can be found to be arbitrary or capricious if it “fails to examine relevant evidence, fails to articulate a rational connection between the facts found and the choice made, fails to be based on a consideration of relevant factors, involves a clear error of judgment, fails to consider an important aspect of the case, or is so implausible as to indicate more than a mere difference of opinion.” ISCR Case No. 94-0215 at 4-5 (App. Bd. Apr. 13, 1995) (citing *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983)).

As is clear from the Judge's findings and analysis summarized above, the Judge found adversely to Applicant because he was convinced that she failed to make any payments on the four alleged student loans prior to issuance of the SOR. Finding no evidence of pre-SOR payments in her documents, the Judge also concluded that Applicant was not credible in testifying regarding her efforts to repay the alleged debts. Contrary to the Judge's findings, however, Applicant's evidence supports her testimony that she made payments prior to the SOR, including intermittent payments during the COVID era. Her documents confirm 19 payments to the state lender's collection agency beginning in January 2020 (prior to completing the SCA) through December 2022 (when the SOR was issued). Most of the payment amounts were modest, but Applicant never represented otherwise. The Judge's finding that “Applicant's payments on the listed student loan accounts did not begin until 2023” is erroneous, as are his findings that “her claims regarding earlier payments are unsupported and therefore not credible” and that she “presented no documentation . . . to support her claims.” Decision at 4. In summary, the Judge's findings on this critical issue do not reflect a reasonable interpretation of the record evidence as a whole. ISCR Case No. 02-12199 at 2–3.

These factual errors are inarguably harmful, as the Judge relied heavily upon them in his mitigation analysis. Specifically, the Judge concluded that AG ¶ 20(a) did not apply because “the record shows no evidence of payments on the listed debts at any time by Applicant until 2023 . . . after she received the SOR in December 2022”; that mitigating condition AG ¶ 20(b) did not apply because there is “no evidence that she acted responsibly before she received the SOR in December 2022” and that “while Applicant warrants some mitigation under AG ¶ 20(d) based on the January 2024 settlement agreement, the mitigation due is insufficient to overcome the lack of evidence of loan payments by Applicant before 2023.” Decision at 6.

In addition to the significant factual errors highlighted above, we conclude that the Judge failed to consider relevant evidence of record. In citing repeatedly to Applicant’s failure to make any payments to the state lender between 2018 and 2023, the Judge overlooked a critical fact—Applicant took **five** loans from the state lender, not four, and she paid off the smallest one in December 2019.¹ Government Exhibit (GE) 2 at 14; GE 3 at 3; GE 4 at 10; GE 5 at 11. This fact, which the Judge never referenced, further establishes that Applicant was making payments after 2018 to the state lender, in direct contradiction of the Judge’s findings. But equally important, the fact that the Judge ignored a satisfied debt to the same state lender underscores a larger problem with the decision—that the Judge focused unduly on the four alleged debts without considering significant evidence in mitigation, to include Applicant’s overall financial history and condition. In doing so, the Judge failed to consider an important aspect of the case.

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 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). An applicant must, however, act responsibly given 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. Relevant to the equation is an assessment as to whether an applicant acted responsibly given her limited resources. ISCR Case No. 22-00180 at 3 (App. Bd. Apr. 22, 2024).

Applicant is a young person who accrued significant federal and state student loan debt to earn her bachelor’s degree and obtained relatively low-paying jobs after graduation. Notwithstanding, she has made regular monthly payments on her federal student loans, and all eight are in good standing. She tried on two occasions to negotiate a payment agreement with the state loan holder but was unable to meet their proposed terms. Nevertheless, she paid off one of five loans, made intermittent payments on the other four since January 2020, and made consistent

¹ The credit bureau reports indicate that a balance of \$1 remained on the debt after a final payment in December 2019, but for the purposes of this discussion the Board is considering that debt as resolved.

payments since January 2023. In January 2024, she entered into a settlement agreement that will make more significant inroads into the balance owed. Moreover, Applicant lives a frugal life, paying off a modest car loan entirely, and carrying no debt other than her federal and state loans. Nothing in this record hints at irresponsible or frivolous spending. Indeed, the Judge found that “[t]he credit bureau reports show that Applicant pays all her bills in a timely manner except for the listed student loans. . . **and is responsible with her finances.**” Decision at 3 (emphasis added). In reaching his adverse decision, the Judge failed to consider the four alleged debts in the broader context of Applicant’s financial history and, in doing so, failed to consider an important aspect of the case.

Based on our review of the record, we conclude that the Judge’s decision contains significant factual errors, fails to consider important aspects of the case, and runs contrary to the record evidence.

Order

The decision is **REVERSED**.

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