



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: July 30, 2024

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

ISCR Case No. 23-00909

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 June 8, 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 May 7, 2024. On June 13, 2024, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman 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.

Under Guideline F, the SOR, as amended, alleged eleven delinquent debts and three bankruptcy petitions. Applicant admitted all allegations and the Judge found against Applicant on each allegation. On appeal, Applicant raises four matters¹ – that the Judge erred regarding the

¹ Applicant’s brief lists six assertions of error, however, some are essentially the same allegations but stated differently.

timing of her bankruptcy petition; that the Judge erred when concluding that certain debts were solely Applicant's responsibility; that the Judge erred in his assessment of the recency of her financial problems; and that the Judge erred by not taking into consideration her health and periods of unemployment. Our review of the Judge's decision confirms that he considered all relevant issues and properly applied the mitigating conditions. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is in her mid-forties, married, and has been employed by a federal contractor since May 2021. Her employment history includes periods of unemployment from June to November 2006, February to April 2009, November 2010 to January 2011, April to June 2013, January to March 2016, and June 2020 to May 2021. Her husband also was unemployed for a period between 2006 and 2007. Applicant's most recent period of unemployment occurred after she became seriously ill in 2020. She left her job in May 2021, following notice of unsatisfactory performance related to absences from work due to illness, and she was hospitalized with serious medical issues for a month after being laid off.

Applicant and her husband filed a Chapter 7 bankruptcy petition in February 1999 and received a discharge in May 1999. In January 2009, she and her husband filed another Chapter 7 bankruptcy petition and received a discharge in April 2009. On June 30, 2023, approximately three weeks after issuance of the SOR, Applicant and her husband filed a petition for Chapter 13 bankruptcy. The petition listed approximately \$117,000 in debts, some of which were joint and others were solely in her name or her husband's. (GX 3 at 27-30; GX 6 at 29-40) Their bankruptcy petition was granted and a five-year payment plan was approved. Applicant and her husband began making monthly payments of \$1,905 in July 2023. The payments increased to \$2,255 in November 2023. As of the date of the hearing, ten payments had been made.

The Judge's Analysis

Based upon these facts and Applicant's admissions, the Judge concluded that the record evidence established two disqualifying conditions under Guideline F: an inability to satisfy debts and a history of not meeting financial obligations. AG ¶¶ 19(a), (c). He also concluded that none of the mitigating conditions had been established. Specifically, he found that AG ¶ 20(a)² was not established because Applicant's delinquent debts were recent and numerous. The Judge also concluded that AG ¶ 20(b)³ was not established because, although Applicant had experienced periods of unemployment and had health issues in the past, she had been employed since May 2021, and there was no evidence that the current debts were the result of circumstances beyond her control. Although Applicant had completed the financial counseling required by the

² (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

³ (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

bankruptcy court, the Judge found that AG ¶ 20(c)⁴ was not established because she had completed only ten months of a five-year Chapter 13 payment plan. The Judge noted that this was the third time Applicant had filed bankruptcy and that there was insufficient evidence to conclude that the payments would continue and that Applicant's financial problems were clearly under control. Concluding that AG ¶ 20(d)⁵ did not apply, the Judge addressed the timing of Applicant's bankruptcy filing, which was within weeks of the issuance of the SOR.

Discussion

Although framed in terms of challenging the Judge's factual findings, Applicant's brief advocates for an alternative weighing of the evidence. There is a difference between errors in a judge's findings of fact and errors in the conclusions drawn therefrom. *See* ISCR Case No. 21-02121 at 3 (App. Bd. Dec. 19, 2023). 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 (App. Bd. Oct. 12, 2007). 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).

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 a 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). In this instance, the Judge's discussion of the potentially applicable mitigating conditions expressly addressed all relevant facts such as Applicant's health issues and her periods of unemployment. The mere presence of some favorable or mitigating evidence does not require the Judge to make an overall favorable determination in the face of disqualifying circumstances such as Applicant's. *E.g.* ISCR Case No. 04-08975 at 2 (App. Bd. Aug. 4, 2006).

Applicant asserts that there was "incorrect debt attribution" because the decision stated that "all debt is in the Applicant's name." In her brief she avers that the "Chapter 13 Petition is in both the Applicant's and her Spouse's names, making both responsible for the monthly Payment to the Trustee." The decision actually states that "all the *credit cards* were Applicant's." Decision at 3.

⁴ (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

⁵ (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(Emphasis added). Regardless, whether or not some of the debts are jointly owed with her husband does not change the fact that Applicant also is responsible for their payment, as well as for those debts solely in her name. The implication that there was factual error is without merit.

Although Applicant asserts that her debts were not recent because they were incurred a number of years ago, the concept of recency is not solely a matter of when a particular debt accrued. Rather, failure to meet financial obligations “is a continuing course of conduct.” ISCR Case No. 01-03695 at 2 (App. Bd. Oct. 16, 2002). Therefore, Applicant’s assertion that her financial problems are not recent is inconsistent with the ongoing nature of her debts. *E.g.*, ISCR Case No. 06-23369 at 4 (App. Bd. Aug. 1, 2008); ISCR Case No. 07-10575 at 4 (App. Bd. Jul. 3, 2008) (holding that an unsatisfied debt is a continuing course of conduct for the purpose of mitigating condition 20(a)).

As part of his analysis of Applicant’s overall financial history, the Judge correctly considered the timing of when Applicant addressed her debts, which is relevant in evaluating an applicant’s case for mitigation. An applicant who waits until her clearance is in jeopardy before resolving debts might be lacking in the judgment expected of those with access to classified information. *See* ISCR Case No. 15-01070 at 4 (App. Bd. Mar. 9, 2016). Although there is evidence that Applicant had begun the process of filing her third bankruptcy prior to issuance of the SOR, the timing of the actual filing is, nonetheless, a relevant consideration.

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. In a Guideline F case, the Board has held that until an applicant has a “meaningful financial track record it cannot be said as a matter of law that [s]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 such as a Chapter 13 bankruptcy petition, are similar 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.” *See* ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 15, 2020).

Although bankruptcy is a remedy available to debtors, an applicant must do more than merely show that he or she relied on a legally available option such as bankruptcy in order to claim the benefit of mitigation. ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004). Reliance upon legal defenses such as bankruptcy does not necessarily demonstrate prudence, honesty, and reliability, therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of an applicant’s financial problems. *See* ISCR Case No. 00-0345 at 2 (App. Bd. Dec. 12, 2001) (discharge of a debt in bankruptcy does not preclude consideration of an applicant’s history of financial problems); ISCR Case No. 02-06703 at 2 (App. Bd. Feb. 25, 2004). “Ongoing bankruptcy proceedings do not insulate Applicant’s financial problems from scrutiny.”

ISCR Case No. 15-00682 at 3 (July 13, 2016). Even if a debt has been discharged in bankruptcy, a Judge should “still consider the underlying circumstances for what they may reveal about an applicant's judgment and reliability.” ISCR Case No. 16-02246 at 3 (App. Bd. Dec. 8, 2017). To receive full credit under AG ¶ 20(d), an applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts.” In the absence of a meaningful track record of repayments, it cannot reasonably be suggested that an applicant has initiated a good-faith effort to repay creditors or otherwise resolve debts. *See* ISCR Case No. 07-09304 at 5 (App. Bd. Oct. 6, 2008). The Judge’s findings are supported by the evidence and it was not error to have found that Applicant’s bankruptcy did not constitute a good faith effort in addressing the debt to afford mitigation under AG ¶ 20(d).

Applicant has failed to establish any harmful error below. The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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