DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: July 25, 2024

In the matter of: ----- Applicant for Security Clearance	ISCR Case No. 23-02238

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 13, 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). Applicant elected a decision based on the written record. The Government submitted a File of Relevant Material (FORM) containing the entire record and the Government's argument. Applicant was provided an opportunity to respond. His response to the FORM was admitted into the record. On May 15, 2024, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. Department Counsel filed a reply brief.

Under Guideline F, the SOR alleged that Applicant had two delinquent credit card debts totaling nearly $20,000 and that Applicant failed to timely file Federal income tax returns for tax

years 2020, 2021, and 2022. Applicant admitted all of the SOR allegations with explanations. The Judge found in Applicant's favor on the tax allegations and against him on the two delinquent debt allegations. On appeal, Applicant asserts that the Judge erred by not convening a hearing when Applicant had expressed a willingness to attend one and failed to consider all of the evidence in mitigation. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in his late 30s. He earned a bachelor's and master's degrees and honorably served in the military from 2003 to 2015. He married in 2004 and divorced in 2006, and he has an 18 year old child. Applicant mitigated the tax allegations. With regard to the two delinquent debts alleged in the SOR, Applicant admitted both, and said he faithfully paid the accounts for ten years. In 2016, after separating from the military, Applicant defaulted on the debts, which were charged off and placed for collection. He argued that he had no creditor to pay for the charged-off debt and did not provide any evidence of efforts he may have made in the past seven years to resolve the debt with the original creditor. The other debt was sent to a collection agency in 2022, and Applicant did not provide evidence of efforts to resolve it from 2016 to 2022. He said the collection agent offered a settlement, but Applicant wanted a written promise from the agency that it will be removed from his credit report.

The Judge held that Applicant failed to resolve his delinquent debts, and they remain current and overdue. She found that Applicant has not taken any significant action to resolve the debts, and he did not contact the creditor on one debt, even when it was clear it was a security concern. He also failed to provide an update on efforts to address the settlement offer on the other debt. His answer to Government interrogatories stating that he is working to have the credit card debt removed from his credit report since they are over seven years old, is an indication that he does not intend to resolve the debts themselves. The Judge noted that, "[b]ecause Applicant requested a determination on the record without a hearing, I had no opportunity to question him about the specifics of his actions and whether he made any additional effort to resolve his delinquent debts or evaluate his credibility and sincerity based on demeanor." She held that the debts remain on his current credit report and Applicant has not acted responsibly. There is no evidence he received financial counselling or that there are clear indications the problem is being resolved, and no good-faith efforts were made in the past years to resolve the debts.

Discussion

The record confirms that Applicant received a copy of the FORM on February 5, 2024, and that the FORM itself and the accompanying cover letter advised Applicant regarding his right to respond. DOHA received Applicant's response to the FORM on February 14, 2024, which was submitted to the Judge and entered into the record. On appeal, Applicant states that in his response to the SOR, he wrote:

> I wish to have the Administrative Judge issue a decision based upon the response and documents I have provided. If the Judge decides to hold a hearing. Please note that I will need to video conference into the hearing as I am outside of the United States. (Appeal Brief at 1, citing to Answer at 3.).

Applicant argues that the Judge "understood I was more than willing to answer any questions and clear up any information." Appeal Brief at 1. He also asserts that he elected a decision without a hearing because he could not attend a hearing in person, and the documents sent to him did not give him "the best instructions as to what I should pick given my travel schedule." He said the Judge "made no attempt or expressed the need for a hearing to understand and or see my sincerity in my responses." *Id*.

Applicant has not established that he was denied the due process afforded by the Directive. First, Applicant clearly and unequivocally elected a decision based on the written record. DOHA personnel have no authority to provide advice to applicants concerning what rights they should exercise and should refrain from going beyond the language of the Directive and, if applicable, the current Prehearing Guidance in their interactions with applicants. *See* ADP Case No. 18-00329 at 3 (App. Bd. Dec. 14, 2018). DOHA personnel must avoid making comments that may influence applicants in exercising their rights under the Directive. ISCR Case No. 20-01622 at 2 (App. Bd. Jun. 27, 2022). We find that Applicant was fully aware of his right to a hearing and knowingly waived that right. A Judge is not obligated to require a hearing, nor is she obligated to require that Applicant respond to inquiries outside of the FORM process. If an Applicant has not requested a hearing with his or her answer to the SOR, and Department Counsel has not requested a hearing within 20 days of receipt of the applicant's answer, the case shall be assigned to the Administrative Judge for a clearance decision based on the written record. Directive E3.1.7. The Judge is an advocate for neither side and bases her decision on the evidence presented to her by the parties. *See* ISCR Case No. 12-10335 at 4 (App. Bd. Dec. 29, 2017).

Next, after requesting a decision on the written record, Applicant received a copy of Department Counsel's File of Relevant Material (FORM) and was given an opportunity to respond to the FORM and submit additional matters for the Judge to consider. He submitted a response to the FORM that included additional documentary evidence. Considering all the circumstances, the Board concludes Applicant knowingly waived his right to a hearing and received a reasonable opportunity to respond to the FORM, including the option to present additional evidence for consideration in his case. Absent a showing of factual or legal error that affects a party's right to present evidence in the proceeding below, a party does not have the right to have a second chance at presenting his or her case before an administrative judge. *See* ISCR Case No. 14-02730 at 2 (App. Bd. Jun. 24, 2016).

Finally, the remainder of Applicant's brief amounts to a disagreement with the Judge's weighing of the evidence. None of his arguments, however, are sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. 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). 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.

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. "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). *See also* AG ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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