



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: August 19, 2024

In the matter of:)	
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)	
-----)	ISCR Case No. 22-01343
)	
Applicant for Security Clearance)	
)	

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 September 26, 2022, 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 May 24, 2024, after conducting a hearing, Defense Office of Hearings and Appeals Administrative Judge Robert Robinson Gales granted Applicant’s security clearance eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30, and Applicant replied.

The SOR alleged that Applicant filed a Chapter 13 bankruptcy in 2017 that was converted to a Chapter 11 and Chapter 7 Bankruptcy before being dismissed in 2020. In addition, he is alleged to have 12 delinquent debts totaling approximately \$136,000. The Judge found in favor of Applicant on all of the SOR allegations. On appeal, Department Counsel argues that the Judge’s findings of fact are not supported by the record evidence, thus rendering the decision arbitrary, capricious, and contrary to law. Consistent with the following, we reverse.

Judge’s Findings of Fact and Analysis: The Judge’s findings and analysis are summarized and quoted below.

Applicant is in his late 50s and has been with his current employer, a defense contractor, since July 2021. He retired from the United States Navy in 2004. He married, divorced, and remarried in 2002, and has two children. Applicant attributes his financial difficulties to a failed restaurant and lounge business. He admitted to all of the SOR allegations with explanations.

Although the Judge acknowledged that neither the Chapter 11 or the Chapter 7 bankruptcy was successful, he found that the initial Chapter 13 process resolved a number of Applicant’s financial issues. Specifically, the Judge found that Applicant resolved 7 of the 12 alleged debts—totaling approximately \$82,500—by payments that he made to the Chapter 13 trustee (SOR ¶¶ 1.c–1.e, 1.h, 1.i, 1.j, 1.l). The Judge found an additional debt (SOR ¶ 1.g) was resolved by payments made by Applicant under a repayment plan. With regard to one charged-off credit union account (SOR ¶ 1.m), the Judge found that the account was not specifically alleged so as to enable him to identify the debt in relation to the bankruptcy documentation. Finally, the Judge found that three debts—a bank account and two credit-card accounts totaling about \$41,400—were not resolved (SOR ¶¶ 1.b, 1.f, and 1.k). Decision at 4-6.

In his mitigation analysis, the Judge concluded:

[D]espite receiving questionable legal support from his second bankruptcy attorney, Applicant apparently had a repayment plan as far back as 2016, and there is verifiable documentary evidence that through his varied efforts, he initiated and is adhering to a good-faith effort to repay his overdue creditors by making substantial payments for accounts that were both alleged in the SOR as well as accounts that were not alleged. Of the 11 alleged delinquent accounts, not including the one for which I indicated that allegation was too broad with insufficient facts to consider, Applicant has resolved 8 such accounts. In addition, he has resolved or is in the process of resolving several identified but unalleged accounts.

. . .

There is evidence of financial counseling and a budget. Far more important is the verifiable documentary evidence of his successful efforts to resolve the eight accounts and his declared intentions of eventually addressing the remaining delinquent accounts. Applicant is currently in a better position financially than he had been as he has a small monthly remainder and his delinquent debts have been reduced significantly. [Decision at 10, 12.]

Discussion

On appeal, the Government challenges the Judge’s factual findings as well as his conclusions. When an administrative judge’s factual findings are challenged, the Board must determine whether the 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 and whether the judge’s findings reflect a reasonable interpretation of the record

evidence as a whole. Directive, E3.1.32.1; ISCR Case No. 02-12199 at 2–3 (App Bd. Aug. 8, 2005). In deciding whether a judge’s conclusions are erroneous, the Appeal Board will review the decision to determine whether 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)). Here, we agree with the Government that the Judge erred in his analysis of the evidence and made findings of fact that were not supported by the record. As a result, his analysis fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choices made.

The Judge made factual findings on 12 debts. Four are not in issue on appeal. The Government concurs in the Judge’s assessment that Applicant resolved the credit card debt alleged at SOR ¶ 1.g and that Applicant has not resolved three SOR debts that total approximately \$41,400 (SOR ¶¶ 1.b, 1.f, and 1.k). We turn now to the Judge’s findings on the remaining eight allegations and conclude that the findings are not supported by relevant evidence.

First, the Judge erred in finding that Applicant resolved seven of the SOR debts (SOR ¶¶ 1.c–1.e, 1.h, 1.i, 1.j, 1.l) through payments made by the trustee in the partial Chapter 13 bankruptcy proceeding. There is simply no evidence of record to support those favorable findings and ample evidence to the contrary. Indeed, the documents to which the Judge cites in support of his favorable findings—the trustee’s report and credit reports—directly contradict his findings. The trustee’s report clearly reflects that the seven claims in issue were not paid. The only payments made by the trustee under the Chapter 13 plan went towards Applicant’s mortgage and his federal and state tax delinquencies. GE 3 at 77. In sum, the record evidence is wholly insufficient to support the Judge’s conclusion that these seven alleged debts, totaling approximately \$82,500, were resolved.

Second, the Judge held that Applicant not only paid the charged-off debt alleged at SOR ¶ 1.e through the trustee but that he also later paid the debt of \$16,134 to a collection agent. This finding is similarly unsupported by the evidence. As Department Counsel points out, the creditor’s account number listed by the collection agent does not coincide with the account number associated with the SOR debt. Our review of the record indicates that, although Applicant apparently resolved another delinquent account held by the same creditor, the evidence is insufficient to conclude that he resolved the debt alleged at SOR ¶ 1.e.

Third, the Judge found favorably for Applicant on the credit union debt at issue in SOR ¶ 1.m because it was not pled with enough detail for him to determine whether it was resolved in the partial Chapter 13 process: “Because the unpaid balance was not alleged, and the identity of the debt purchaser was not provided, it is impossible to align the necessary information to determine if the account was identified in the Chapter 13 bankruptcy by its own name or under the identity of another creditor.” Decision at 6. There is considerable leeway with respect to the content of an SOR allegation but to be legally sufficient an allegation must place an applicant on reasonable notice of the allegations against him or her so that the applicant has a meaningful opportunity to respond to the allegations and prepare a defense to them. *E.g.*, ISCR Case No. 02-23365 at 3 (App. Bd. March 22, 2004). We agree that this debt, alleged only as a named credit union account that

was charged off, could have benefited by greater specificity to include an amount and/or account number. Nevertheless, the Judge's finding is in error for several reasons. The allegation was supported by both the Chapter 13 trustee's report (GE 3) and the Government's credit reports (GEs 4-5). The trustee's report lists three accounts owed to the named credit union, and the November 2021 and June 2022 credit reports list three charged-off debts with the same credit union. Moreover, the same three charged-off accounts appear in the October 2022 credit report that Applicant submitted at hearing (AE F at 27-29). The credit reports were sufficient to establish the Government's prima facie case that Applicant had at least one SOR delinquent debt with this particular credit union that was of security concern. *E.g.*, ISCR Case No. 19-02993 at 5 (App. Bd. Nov. 23, 2021). Moreover, as discussed above, the only payments made by the trustee were towards Applicant's mortgage and his federal and state tax delinquencies. No credit unions or collection agencies were paid, so the Judge's professed concern that the trustee may have made payments to a creditor who had purchased the debt is without basis. Most importantly, Applicant admitted to the debt in his answer to the SOR. If Applicant was unclear as to which of the three delinquent accounts with this credit union was in issue, he could have objected or sought clarification. Having instead admitted the debt, Applicant had the burden of producing evidence to show that it was resolved or mitigated. Directive ¶ E3.1.15. He failed to do so. There is no evidence of record that indicates any of the three debts to this credit union were resolved. We conclude that the allegation was pled with sufficient specificity and supported by sufficient evidence, that Applicant failed to produce evidence in mitigation of the admitted debt, and that the Judge erred in finding favorably for Applicant on the basis of a lack of specificity in the SOR.

Overall, the record shows that only one of the 12 SOR debts has been resolved, contrary to the Judge's findings that 9 of the 12 debts were resolved. Said differently, Applicant has resolved approximately \$12,300 of the \$136,000 delinquent debt alleged. 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).

The evidence of Applicant's failed bankruptcy filings (SOR ¶ 1.a) along with his long-standing unresolved debts (SOR ¶¶ 1.b-1.f and 1.h-1.m) indicates a history of financial irresponsibility and failure to meet financial obligations that have not been mitigated. Based on our review of the record, we conclude that the Judge's findings are not supported by record evidence and that his decision failed to examine relevant evidence, failed to consider an important aspect of the case, and runs contrary to the record evidence. It is not sustainable.

Order

The decision in ISCR Case No. 22-01343 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