



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: September 5, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 23-01055
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 6, 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 July 15, 2024, after conducting a hearing, Defense Office of Hearings and Appeals Administrative Judge Bryan J. Olmos denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant has seven delinquent debts totaling about \$32,750. The Judge found against Applicant on all SOR allegations except for one debt of \$317. In her appeal brief, Applicant argues for a reassessment of the Judge’s findings and conclusions and asserts that the Judge failed to consider all relevant evidence in mitigation, thus rendering the decision arbitrary, capricious, and contrary to law. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in her early-30s and has been working for her sponsoring employer since November 2023. She was previously divorced in 2017 and remarried in 2020. She has one child and three stepchildren, all teenagers. Applicant attributes her financial difficulties to inconsistent employment, underemployment, and a failed business. She admitted all but two of the SOR allegations.

Applicant has past-due indebtedness, largely due to financial difficulties beginning in 2021 because of a failed business with her spouse. Her business was impacted by the pandemic, and she incurred additional debt in an effort to save the business including pay-day loans in which she defaulted. The Judge found that these were unusual circumstances that were beyond her control. Following her business failure, she tried reducing her expenses, sought new employment, and hired a law firm to address her delinquent debts. However, she was unable to show the law firm took any action to legitimately dispute debts, negotiate debt reduction, or establish payments plans toward debt resolution. One utility debt was paid after the hearing for which the Judge found in her favor. No mitigating conditions apply for the remaining debts.

Discussion

In her appeal brief, Applicant claims the Judge failed to consider all of the evidence, argues for reconsideration of certain debt reduction efforts, and includes additional argument as to the current status of some debts.

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).

Applicant asserts that the Judge failed to consider that she hired a law firm to help resolve her debts. Our review of the record clearly confirms the Judge's consideration of Applicant's efforts to resolve debts, including her engagement of a law firm. The evidence however shows the law firm or Applicant failed to establish concrete efforts toward debt reduction, legitimate disputes, or debt resolution plans as a result of the law firm's efforts. Additionally, her testimony regarding efforts to resolve some debts was not supported by persuasive documentary evidence. 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). 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. ISCR Case No. 09-08462 at 4. Relevant to the equation is an assessment as to whether an applicant acted responsibly given her limited resources *See, e.g.*, ISCR Case No. 08-06567 at 3-4 (App. Bd. Oct 29, 2009).

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).

Next, Applicant reasserts her efforts to resolve individual debts, citing to her testimony during the hearing, and argues that she has acted responsibly during her financial challenges. None of her arguments are sufficient to establish that the Judge failed to consider her testimony or documentary evidence in his decision. 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). 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 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 in ISCR Case 23-01055 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