



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

Date: September 11, 2024

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 In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 23-02593

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

John Cannon, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 11, 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 18, 2024, after conducting a hearing, Defense Office of Hearings and Appeals Administrative Judge Edward W. Loughran denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged five financial concerns, and the Judge found against Applicant as to all five. On appeal, Applicant argues that the Judge’s decision is arbitrary and capricious. Consistent with the following, we affirm the Judge’s decision.

Judge's Findings of Fact and Analysis

Applicant is in her mid-thirties. A military veteran, she was honorably discharged in 2007 and receives disability pay of about \$4,100 for post-traumatic stress disorder. She earned a bachelor's degree in 2020 and is pursuing a master's degree. Her first two marriages ended in divorce. Applicant is separated from her third husband, a military servicemember whom she married in 2016. They had one child early in the marriage and decided that they would have two more and that she would homeschool the children. Applicant's VA disability rating was about 70% at the time, and their plan did not allow them to pay their accumulated debts. They decided instead to pay only her husband's debts, as he needed a security clearance and she did not.

The SOR alleges five delinquent debts totaling about \$31,300. Applicant admitted all the debts in her answer to the SOR but stated that the debts either fell off her credit report because of age or would shortly fall off the report. Three charged-off debts totaling about \$17,100 (SOR ¶¶ 1.b, 1.d, and 1.e) are owed to the same credit union. The \$11,515 charged-off debt alleged in SOR ¶ 1.c was used to fund a business venture that failed, and the debt alleged in SOR ¶ 1.a was a credit card debt. Applicant has not paid any of the SOR debts and does not intend to. Although some of the collection companies agreed to settle the debts for as low as 10%, the debts are past the statute of limitations and paying or settling any of the debts would restart the seven-year reporting period and harm her credit score. Her April 2024 credit report does not reflect any of the alleged debts.

Applicant and her husband separated in about 2023 and she anticipates they will divorce. Although he is still on active duty, he does not pay child support. She did not actively pursue him for child support because he had accused her of being a "gold-digger." She plans to retain her attorney for the purpose of seeking child support for her child. In the past seven years, Applicant has incurred no new delinquent debts. She has not pursued financial counseling. She and her husband purchased a new vehicle in about June 2022, financed through a loan of about \$53,600. Within a year, she traded it in for a larger vehicle, for which she pays about \$800 per month.

Applicant has a history of delinquent debts and financial problems. Although Applicant's decision to be a stay-at-home mother is understandable, it was not beyond her control. The couple's decision to sacrifice Applicant's finances to help her husband maintain a security clearance worked for her until they separated, she decided to reenter the workforce, and she realized that a security clearance would also be beneficial to her.

Applicant has not paid any of the SOR debts, and she does not intend to, as she waited for them to age off her credit report. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Little mitigation is provided in security clearance cases when an applicant stands on a legal defense such as the statute of limitations.

The SOR debts are at least seven years old, and Applicant has not accrued any additional debts. Had she been more concerned with paying her legal obligations than maintaining a good credit score, this decision could have gone in her favor.

Applicant did not act responsibly under the circumstances, and she did not make a good-faith effort to pay her debts. Her financial issues are recent. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. [Decision at 5 (internal citations omitted).]

Discussion

On appeal, Applicant argues that the Judge's decision is arbitrary and capricious. Although Applicant does not cite to any specific errors by the Judge, she argues broadly that the Judge failed to consider the context in which these debts arose, to include: that Applicant was in an abusive marriage; that she acceded to her husband's demands that she not work outside the home; and that "[u]pon breaking free from her abusive marriage, [Applicant] identified a game plan to address the delinquent marital debts that were in her name alone" but received financial advice that "due to the age of the debts it would be better for her to allow them to age out, thereby falling off her credit score, than to pay a settlement on each of the debts." Appeal Brief at 5. Applicant notes that this "was accurate financial advice" as the debts have since fallen off. *Id.* at 2. She argues, however, that she "would have settled these debts, as she testified was an option and was referenced in Judge Loughran's Decision; had she known it would result in her being denied a security clearance." *Id.* at 3. In a personal statement attached to the appeal brief, Applicant highlights the legal and financial risks of now making payments on these debts and questions whether it is a reasonable expectation that she "open myself up to potential financial lawsuits in order to get a clearance." Personal Statement at 3.

These arguments are misplaced. 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, and the Government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to satisfy it in a timely manner. *E.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). The Judge's conclusion that Applicant did not act responsibly under the circumstances is adequately supported by the record. His analysis of her decision to allow the statute of limitations to run is well-rooted in the Appeal Board precedent to which he cites. Fundamentally, Applicant is requesting reconsideration of the Judge's decision and, to that end, she provides additional details about the circumstances that led to the alleged debts and about her current personal, professional, and financial situation. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

We have considered all of Applicant's arguments and conclude that none is sufficient to rebut the presumption that the Judge considered all of the evidence in the record, nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "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 No. 23-02593 is **AFFIRMED**.

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board

Signed: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board