



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

Date: May 5, 2023

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

USN-C Case No. 22-02457-R

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Brittany D. Forrester, Esq.

On August 2, 2021, the Department of Defense (DoD) issued a statement of reasons (SOR) pursuant to DoD Manual 5200.02 (Apr. 3, 2017, as amended) (DoDM 5200.02) advising Applicant that his conduct raised security concerns under Guideline F (Financial Considerations) of the National Security Adjudicative Guidelines. On December 28, 2021, Applicant submitted a reply.

On October 3, 2022, DoD Consolidated Adjudication Services (CAS) revoked Applicant’s eligibility for access to classified information, and he appealed that revocation under the provisions of DoDM 5200.02. On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum requiring that DoD civilian or military personnel whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum be provided the opportunity to pursue the hearing and appeal process set forth in DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).

As a result of Secretary Moultrie’s memo, Applicant was given the opportunity to receive the process set forth in the Directive, and he elected that process. Tr. at 7. On March 13, 2023, after a hearing, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. He contends that the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact: The Judge’s findings are summarized in pertinent part.

Applicant is in his early sixties and divorced, with two teenaged children. He served in the military from 1981 to 2001 and has held a security clearance for about 40 years. He earned a bachelor’s degree in a technical area and has received “an exceptional amount of information security training over several decades.” Decision at 2.

The SOR alleges 13 delinquent accounts totaling about \$103,000. Applicant testified that his financial problems initially arose from several factors that included his 2012 divorce, child support obligations, and medical issues in 2018. *Id.* at 4. Then, beginning in 2017 or 2018, Applicant became the victim of an online romance scheme. In a situation involving stolen identity, Applicant was led to believe that he was communicating with a female U.S. soldier serving in Afghanistan whom he knew as Staff Sergeant (SSG) A. Over a two-to-three-year period, SSG A encouraged Applicant to borrow approximately \$100,000 and to deposit the funds in bank accounts belonging to her purported relatives. Applicant did so, believing that he and SSG A would live together upon her return from deployment. When SSG A’s return to the United States was repeatedly delayed, Applicant became suspicious, made inquiries to the military unit, and ultimately discovered that SSG A did not exist. Applicant acknowledged that he was the victim of a scam known as “catfishing.” *Id.* He was unaware that his funds were being sent to Ghana until he saw the report of investigation for his security clearance.

In his April 2021 background interview for his clearance investigation, Applicant stated his intent to file for bankruptcy. Upon his subsequent discovery that he did not qualify for Chapter 7 bankruptcy, Applicant stated his intent to file under Chapter 13 instead. After losing his federal employment in February 2022, Applicant is again pursuing Chapter 7 bankruptcy.

The Judge’s Analysis: The Judge’s analysis is summarized and quoted in pertinent part.

None of the mitigating conditions fully apply. Applicant did not provide proof either that he made any payments on the 13 delinquent SOR debts or that he established payment plans. Although it was “prudent and reasonable” for Applicant to file Chapter 13 bankruptcy in late 2021 or early 2022, he did not exercise due diligence in establishing a bankruptcy payment plan. *Id.* at 12. Filing for Chapter 7 bankruptcy in March 2023 was “too little too late.” *Id.*

[Applicant] indicated most of his delinquent debts were due to him being the victim of an Internet scam where SSG A’s identity was used in a scheme over a two-year period to steal about \$100,000 from him. He never talked to SSG A. SSG A’s story that she was unable to access her own accounts and needed funds to support

relatives or move to join Applicant at his residence were transparently false, or at least they became transparently false well before Applicant gave about \$100,000 to her. Applicant is a 60-year-old expert in information technology with decades of experience. He has security training. SSG A had access to a computer and the Internet and was stationed in a major Afghan city, Kabul. Her claims that she was unable to call him on the telephone, access her accounts for two years, and was unable to return to the United States for two years were transparently false. Her suggested method of transferring funds from Applicant to her by using multiple accounts under different names should also have raised a red flag. [*Id.* at 11.]

“Being a victim of a crime is a circumstance beyond an Applicant’s control when an Applicant shows reasonable judgment.” *Id.* (citing ISCR Case No. 14-05803 at 3–4 (App. Bd. July 7, 2016)). The Appeal Board has held that an applicant who is defrauded “by means of a facially preposterous real estate scheme cannot fairly claim that [his] debts arose from circumstances outside [his] control or that [he] otherwise exhibited sound judgment in the handling of [his] finances.” *Id.* at 12, quoting ISCR Case No. 14-05803 at 3–4. In this case, Applicant did not act reasonably or exhibit sound judgment in his payments to SSG A. *Id.*

Discussion

Applicant has not challenged any of the Judge’s specific findings of fact. Rather, he contends the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all of the evidence, by mis-weighting the evidence, and by not properly applying the mitigating conditions and whole-person concept.

Most notably, Applicant argues that the Judge “clearly misweighed [Applicant’s] testimony and reasoning for his involvement in the ‘catfish’ scam which led to his financial detriment.” Appeal Brief at 6. Applicant contends that the Judge failed to give proper weight to the fact that he was “misled” in the scam, which resulted in his financial delinquencies. *Id.* at 15, 16. Applicant argues that his situation is distinguishable from the cases involving real estate schemes, as he “developed a trusting, romantic relationship” with SSG A that did not involve “creative financing” or some other “get rich quick” scheme. *Id.* at 7. The Judge, however, clearly articulated the basis for his conclusion that the online scam was not a mitigating factor. He highlights that—by training and experience—Applicant should have recognized that SSG A’s story was transparently false. Nevertheless, Applicant engaged in an online relationship for approximately two years and gave SSG A approximately \$100,000 without ever meeting or talking to her, raising serious questions about his judgment. The Judge’s determination that these circumstances were not beyond Applicant’s control and that Applicant did not act reasonably is well-supported by the record.

None of Applicant’s arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, Directive, Encl. 2, App. A ¶ 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: James F. Duffy
James F. Duffy
Administrative Judge
Chair, Appeal Board

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

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