

### **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: January 28, 2025

In the matter of:

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| SCR Case No. 23-01303
| Applicant for Security Clearance
| Applicant for Security Clearance | Contact the security

#### APPEAL BOARD DECISION

### <u>APPEARANCES</u>

#### 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 January 22, 2024, 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 November 14, 2024, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

# **Background**

The SOR alleged 15 financial concerns—a mix of delinquent student loan accounts, delinquent federal and state taxes, and delinquent consumer accounts. The Judge found favorably for Applicant on 13 of the alleged concerns and adversely on 2 consumer accounts that totaled approximately \$10,700. In his decision, the Judge made the following finding regarding those two accounts: "1.g. and 1.h. Applicant admits that he has past-due debts to Creditor G totaling about

\$10,796. Despite having two post-hearing months to submit additional evidence, Applicant has submitted nothing further in this regard." Decision at 2 (internal citations omitted).

The Judge's decision states that Applicant submitted "two packets of documents" post-hearing, which the Judge marked and admitted into evidence as Applicant Exhibits (AE) A and B. *Id.* at 1–2. Our review of the record confirms that—contrary to the Judge's finding—AE A contains documents regarding the debt alleged at SOR ¶ 1.g. Specifically, Applicant submitted proof of a payment plan and an initial payment under that plan. AE A at 13–14. The Judge apparently overlooked these documents.

Because the Judge found adversely on only two allegations totaling \$10,700, we cannot assume that his error regarding one of those debts, of approximately \$5,100, is harmless, as it may have been outcome determinative. *E.g.*, ISCR Case No. 95-0495, 1996 WL 481030 at \*3 (App. Bd. March 22, 1996) (citing *N.L.R.B v. American Geri-Care*, 697 F.2d 56, 64 (2d Cir. 1982) (remand required where there is a significant chance that, but for the error, a different result might have been reached), cert. denied, 461 U.S. 906 (1983).

Given these circumstances, the best resolution of this case is to remand it to the Judge to correct the identified error and for further processing consistent with the Directive. Upon remand, the Judge is required to issue a new decision. Directive ¶E3.1.35. The Board retains no jurisdiction over a remanded decision; however, the Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.130.

## **ORDER**

The decision in ISCR Case No. 23-01303 is **REMANDED**.

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