



**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: February 6, 2025

\_\_\_\_\_ )  
 In the matter of: )  
 )  
 )  
 ----- )  
 )  
 Applicant for Security Clearance )  
 \_\_\_\_\_ )

ISCR Case No. 23-02256

**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 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 November 20, 2024, Defense Office of Hearings and Appeals Administrative Judge Gatha LaFaye denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged six consumer and auto debts, delinquent for approximately \$30,000. In response to the SOR, Applicant admitted all of the allegations with explanation and requested that his case be decided based on the written record. He received a complete copy of the Government’s File of Relevant Material (FORM) on February 28, 2024, and responded on March 29, 2024. Based on evidence submitted with his FORM response, the Judge found that Applicant had resolved five of the six debts and had initiated a repayment plan for the sixth, all in March 2024. While acknowledging these efforts, the Judge went on to find that none of the mitigating conditions was

fully established for any debt, both because of the recency of Applicant's resolution efforts<sup>1</sup> and due to the lack of clarity surrounding his finances and past financial problems.<sup>2</sup> She ruled adversely on all allegations.

On appeal, Applicant first asserts that he "specifically complied with every issue listed in the SOR" (*see* Appeal Brief at 1), which we interpret as an argument against the Judge's ultimate adverse conclusion despite her acknowledgment that his debts were either resolved or in the process of being resolved. This argument is unpersuasive, as we have long held that the presence of some mitigating evidence does not compel a favorable security clearance decision. *See* ISCR Case No. 04-08975 at 1 (App. Bd. Aug. 4, 2006). Rather, the judge must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable, or *vice versa*. *Id.* In financial cases, an applicant having paid his debts does not obligate the judge to find favorably regarding the debts themselves or to enter a favorable formal finding. To the contrary, the facts and circumstances underlying the debts, including how they were incurred, became delinquent, and were addressed, are relevant factors for the judge to consider for what they may reveal about the applicant's national security eligibility. *See* ISCR Case No. 03-04704 at 3-4 (App. Bd. Sep. 21, 2005). Here, the Judge made sustainable findings regarding Applicant's history of financial problems and the timing of his efforts to resolve the SOR concerns, which, based upon the documentation available in the record, appear to have occurred only after the SOR was issued.

Applicant also provides new evidence in the form of an updated credit report and documentation regarding the SOR allegation that the Judge concluded remained outstanding. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

We turn finally to Applicant's argument regarding his involvement with a debt resolution company in 2020. The record reflects that Applicant began working with the company in November 2020 to address five of his debts, with \$575 monthly payments scheduled through October 2022. SOR Response at 8-14. Although Applicant provided the payment *schedule* set forth when he entered the agreement, there is no evidence in the record regarding how many payments Applicant actually made pursuant to it, if any. Despite that the Government repeatedly identified this evidentiary hole (*see, e.g.*, FORM at 3), Applicant failed to provide documentation of his payments in his subsequent FORM response.

On appeal, Applicant challenges the Judge's finding that he failed to provide proof of his payments to the company, noting that he "listed the payments in the original email," but that the account is otherwise too old to be able to provide proof of the actual payments. Appeal Brief at 1.

---

<sup>1</sup> *See* Decision at 8 ("[Applicant] took these actions in direct response to the Government's evidence in this FORM, and well after the initiation of the security clearance process. He did not explain how he obtained the funds to make these payments and why he waited so long to resolve the debts. The timing of his action negatively impacts the degree to which the mitigating factors apply.").

<sup>2</sup> *See, id.* ("He has been gainfully employed with the same defense contractor since August 2012. He did not disclose information about his earnings, savings or checking accounts, or other financial assets; nor did he disclose information about his routine household expenses to permit me to evaluate the reasonableness of his actions under the circumstance. Applicant has a long history of financial problems as established by the record. He readily admitted he has mismanaged his funds and has failed to live within his means at times.").

This argument fails for several reasons. First, Applicant’s documentation – to include his referenced payment schedule and email narrative – simply does not reflect compliance with payments, and the Judge’s conclusion in that regard was well supported.

Regarding Applicant’s claim that he was unable to provide proof of actual payments because the account is so old and the company has since filed bankruptcy, this position is curious because, as the Government noted in its FORM, Applicant appears to have access to the documentation relatively recently. For example, he claimed to still be working with the company as of at least February 2023 (*see* SOR Response at 7), only one year before the FORM was issued and he was alerted to the importance of the missing evidence. He then asserted his ability to provide such payment documentation to his security officer as recently as April 2023. Applicant’s latest claim of inability to access the records, despite seemingly having had such access recently, detracts from the credibility of his participation in the agreement or resolution efforts predating the SOR.

### **Conclusion**

There is no presumption of error below and the appealing party has the burden of demonstrating that the judge committed factual or legal error. *See* ISCR Case No. 00-0050 at 2 (App. Bd. Jul. 23, 2001). Applicant has not met this burden. 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 No. 23-02256 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