

**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**

2005, 2012, and 2021. All criminal concerns were cross-alleged under Guideline E and the alcohol-related charges were also cross-alleged under Guideline G. Finally, under Guideline F, the SOR alleged that Applicant carried delinquent consumer and mortgage debt totaling approximately \$44,000. In response to the SOR, Applicant denied the 2005 and 2021 DWIs and the 2013 assault charge as alleged under Guideline J. He admitted all other allegations.

The Judge favorably resolved the Guideline E and Guideline G cases, but he ruled adversely on all Guideline J and Guideline F allegations. Citing Applicant's "extensive history of criminal violations" and that he was awaiting a court date for driving a vehicle without insurance in December 2024, the Judge opined that the more recent infraction "tends to show that [Applicant] still does not comply with laws, rules, and regulations" and found insufficient evidence that Applicant's criminal behavior is unlikely to recur or has been successfully rehabilitated. Decision at 7. Regarding the financial concerns, the Judge acknowledged that Applicant had resolved his mortgage debt, was working to resolve three SOR debts and two additional debts not alleged in the SOR, and commended Applicant's hiring of a debt consolidation company to assist in those efforts. The Judge went on, however, to find that the resolution efforts began after the SOR was issued, which "detracts from his ability to show that he acted responsibly under the circumstances or in good faith," and that at least three SOR debts remained unaddressed. *Id.* at 10.

There is no presumption of error below and the appealing party has the burden of raising claims of error with specificity. Directive ¶ E3.1.30. On appeal, Applicant raises no claim of harmful error by the Judge. Instead, he seeks reconsideration of his case, reiterating his explanations for his criminal conduct and delinquent debts, and stating his intentions for addressing and avoiding both in the future. He also provides new evidence regarding the outcomes of several of the criminal charges, the status of his mortgage account and other debts, and his completion of an outpatient substance abuse treatment program. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant's appeal also requests conditional security eligibility. Appendix C of SEAD 4 provides authority to grant conditional security eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." Applicant did not request conditional eligibility at hearing and nothing in the record supports a conclusion that the Judge erred in not granting it. Moreover, although Appendix C provides authority to grant conditional security eligibility,¹ our review of this case reflects no evidence of proposed additional security measures or the efficacy thereof in the record below. Accordingly, Applicant has not established that the granting of an exception under Appendix C is merited.

¹ DIR. FOR DEF. INT. (INT. & SEC.), Memorandum (Jan. 12, 2018) ("Effective immediately, authority to grant clearance eligibility with one of the exceptions enumerated in Appendix C is granted to any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.").

Conclusion

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. Rather, the Judge examined and weighed the disqualifying and mitigating evidence and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "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. 22-02575 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board