DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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KEYWORD: Guideline F

DIGEST: Applicant argues that he entered into a rehabilitation program for the student loans in 2019 and, "[a]s a result of that action," those loans are no longer delinquent. Appeal Brief at 6. To the extent he may be claiming the Judge erred in finding the consolidated student loan is no longer in default due to the presidential suspension of student loan payments during the COVID-19 pandemic, we do not find this argument persuasive. Adverse Decision is Affirmed.

CASE NO: 20-02219.a1

DATE: 10/28/2021

Date: October 28, 2021

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

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Jacalyn E. Crecelius, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 30, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 31,

2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in the findings of fact; whether the decision was arbitrary, capricious, or contrary to law; and whether the Judge was biased against him. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is in his late fifties, is married, and has no children. He has earned an associate's degree. He served honorably in the U.S. military and has not held a security clearance since the military.

The SOR contains four allegations. The Judge found against Applicant on two delinquent student loans totaling about $49,500. In his SOR Answer, Applicant admitted those allegations. He became delinquent on the student loans about six years ago when his income decreased. He indicated that he asked for a deferment but provided no corroborating documentation. In 2019, he thought he participated in a rehabilitation program by making $5 monthly payments. At some point, the two loans were consolidated. During the COVID-19 pandemic, his student loan payments were suspended until further notice. He is not currently in default.

There is insufficient proof that Applicant took any meaningful steps to resolve the student loans for a number of years. The fact that these loans are not currently in a default status is not due to any action taken by Applicant. He has not mitigated the security concerns arising from his financial indebtedness.

Discussion

Findings of Fact

Applicant contends the Judge erred in the findings of fact. We examine disputed findings to determine if they are supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See also* ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).

Applicant first argues that Judge erred when "[s]he wrote that [Applicant] merely received a reduction in pay in 2004." Appeal Brief at 3, citing Tr. at 84. This assertion is not an accurate characterization of the Judge's finding. When the Appeal Board examines individual words or sentences in a Judge's decision, we do not consider them in isolation. Rather, we consider them

in light of the decision in its entirety. *See, e.g.,* ISCR Case No. 18-02181 at 5 (App. Bd. Aug. 19, 2019). In this case, the Judge found:

> Applicant acknowledged that he has always paid his bills and paid earlier student loans from 1990 to 1996. However, in 2004 his salary was reduced, and he fell behind on some bills, but he obtained two jobs and paid his credit card debts. Applicant presented documentation that he paid a loan of $11,024 in 2017 (Ex. J, page 30) He even made double payments on his car note in 2012. (Tr. 37) He worked for a security firm from 2004 until March 2015. (Tr. 39) Before 2015, he stated that he made about $44,000 to $49,000 a year due to overtime. (Tr. 41) He also stated that before 2015, he was making a salary of $50,000 to $60,000 with overtime. (Tr. 20). [Decision at 2.]

The Judge did not state "[Applicant] merely received a reduction in 2004." Instead she was highlighting his track record of paying debts before the student loans at issue became delinquent. We find no error in the Judge's findings regarding his financial situation in 2004. While Applicant may have preferred that the challenged finding was drafted differently, such dissatisfaction does not demonstrate error. Judges have broad latitude and discretion in how they writes their decisions. *See, e.g.,* ISCR Case No. 09-02752 at 6 (App. Bd. Apr. 6, 2010).

Applicant also contends that the Judge erred in finding there was no proof of him sending a check to a state tax authority. We agree the Judge erred in this finding. The reverse side of the check reflects that it was endorsed by the state tax authority. Even though the Judge erred in this finding, it was harmless because it did not likely affect the outcome of the case. *See, e.g.,* ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020). Of note, the check in question relates to an SOR allegation in which the Judge found in Applicant's favor.

Additionally, Applicant argues that he entered into a rehabilitation program for the student loans in 2019 and, "[a]s a result of that action," those loans are no longer delinquent. Appeal Brief at 6. To the extent he may be claiming the Judge erred in finding the consolidated student loan is no longer in default due to the presidential suspension of student loan payments during the COVID-19 pandemic, we do not find this argument persuasive. *See generally,* ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021) and ISCR Case No. 20-03208 at 2 (App. Bd. Jul. 6, 2021) for examples of delinquent student loans subject to the presidential suspension that were not mitigated. In this case, a credit report (Government Exhibit (GE) 2 at 3) reflects Applicant's consolidated student loan account had a balance of over $50,000 in August 2020. Except for providing a document showing a $5 payment towards the consolidated student loan that would be processed in February 2020 (Applicant's Exhibit (AE) I), Applicant presented no other documentary evidence of payments towards those loans. From our review of the record, the Judge's challenged finding that Applicant's consolidated student loan was no longer in default due to the presidential suspension of payments was a reasonable inference drawn from the record evidence. Furthermore, even if Applicant's consolidated student loan is no longer delinquent as a result of his participation in the rehabilitation, the Judge could still consider that he failed for a number of years to take meaningful action to address the debts in assessing his national security eligibility. *See, e.g.,* ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017) (even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as

any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance).

Mitigation Analysis

Applicant further argues the Judge did not consider all of the evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. He contends, for example, the student loan debt is not recent, notes he experienced conditions beyond his control that contributed to his indebtedness, and argues he has a willingness to resolve his financial problems. None of Applicant's arguments, however, 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. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Applicant also argues the Judge considered non-alleged conduct (a failure to pay income taxes as required) for an impermissible purpose. A fair reading of the Judge's decision does not support this assertion of error. The Judge considered the non-alleged conduct for a permissible purpose, *i.e.*, evaluating Applicant's evidence in mitigation. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017) (setting forth the limited purposes for which non-alleged conduct may be considered).

In arguing there is no doubt about his security clearance eligibility, Applicant notes the summary of his background interview reflects "[t]here is nothing in Subjects background that can be used to place Subject in a position to be blackmailed or coerced." Appeal Brief at 7, quoting from AE D. This quoted statement does not denote the interviewer's opinion regarding Applicant's worthiness for a clearance. Rather, it represents Applicant's answer to the interviewer's question. In any event, even if an interviewer offered such an opinion it would not bind DoD in its evaluation of an applicant's national security eligibility. *See, e.g.*, ISCR Case No. 15-05344 at 3 (Dec. 6, 2017). Applicant also asserts that he does not have access to classified information in his job. However, whether or not an applicant has access to classified information is not a relevant consideration in determining his or her national security eligibility. *See, e.g.*, ISCR Case No. 18-02728 at 2 (App. Bd. Nov. 12, 2019).

Bias

Applicant argues the Judge was biased against him and took advantage of his *pro se* status. He also contends the Judge made a handful of intemperate remarks throughout the hearing and in her decision. For example, he takes issue with the Judge's conclusion that "Because he wanted a security clearance, he contacted a company in 2019 to start a payment arrangement." Appeal Brief at 12, quoting from Decision at 6. We find no error in that conclusion. The evidence reflects that Applicant submitted a security clearance application in October 2019 and authorized an agency to make $5 payments towards the student loans in November 2019. GE 1 and AE I. The Judge's conclusion in question is a reasonable inference drawn from the record evidence. Overall, Applicant has not directed our attention to anything in the record that would likely persuade a reasonable person that the Judge was biased. Applicant has failed to meet the heavy burden on him to rebut the presumption that a Judge is impartial and unbiased. *See, e. g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020).

Conclusion

Applicant has failed to establish the Judge committed any harmful error. 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 national security."

Order

The decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board