

(Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 7, 2021, after the hearing, Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge's favorable findings under the Guideline B allegations were not raised as an issue on appeal. Applicant raised the following issues on appeal: whether his due process rights were violated and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judges Findings of Fact and Analysis

Applicant, who is in his thirties, is a prospective employee of a defense contractor. He served honorably in the U.S. military reserves. He has never been married and has no children.

Under Guideline F, the SOR alleged that Applicant had six delinquent debts totaling over \$26,000. He admitted the debts. The debts are reflected in a 2018 credit report. Three became delinquent on or before 2013. The others were reported delinquent in 2015, 2016, and 2018.

In 2009, Applicant started a business. It was initially successful but was later undercut by a competitor. In trying to keep the business afloat, he incurred debts that he could not pay. Applicant sold the business in 2012. He experienced periods of unemployment and underemployment. In 2019, he began working for a company and purchased a number of vans for that employment. Applicant lost all but one of the vans when the company's business declined during the COVID-19 pandemic.

Applicant has hired a credit repair company, but he has not made any payments toward the delinquent debts. He claims that the balance owed on a loan for a repossessed vehicle was paid through the sale of that vehicle and gap insurance, that two telecommunications companies "basically stole [his] money[,]" and that other creditors could not locate the debts. The alleged debts are not listed on his recent credit report. Decision at 3.

Applicant currently has about \$14,000 in a bank account. He had Federal tax delinquencies for 2012 and 2014 that he did not disclose in his 2018 security clearance application. There is no indication he disclosed those tax delinquencies during his background interview. He disclosed them at the hearing. Tr. at 51-54 and Applicant's Exhibit (AE) D. As of June 2021, he owed the IRS about \$6,000 in delinquent taxes. He paid that tax delinquency after the hearing. AE D.

Applicant's financial problems are recent and continue to cast doubt on his current reliability, trustworthiness, and good judgment. Although he experienced events beyond his control that contributed to his financial problems, he did not establish that he acted responsibly under the circumstances or that he made a good-faith effort to pay the delinquent debts. Some mitigating conditions are not applicable; others only partially apply. He did not mitigate the alleged security concerns.

Discussion

Applicant's brief contends:

[T]he record evidence does not support the Administrative Judge's ultimate unfavorable findings under Guideline F. He submits that the Judge did not properly consider or apply the mitigating factors in the case and that he ignored important mitigating evidence. Thus, he failed to adequately address important aspects of the case. The Judge's analysis under Guideline F was cursory and he did not adequately explain his conclusions or relate them to record evidence or even many favorable finding he made. [Appeal Brief at 3.]

Regarding the contention that the record does support the Judge's ultimate unfavorable findings, we note that Applicant admitted each of the Guideline F allegations in responding to the SOR. A 2018 credit report also established those allegations. Having admitted those allegations, Applicant was responsible to present evidence to mitigate the security concerns arising from those allegations, and he also had the ultimate burden of persuasion in obtaining a security clearance. Directive ¶ E3.1.15. Given these circumstances, the key issue on review is not whether there was sufficient evidence in the record to support the Judge's unfavorable findings but rather whether the Judge erred in concluding Applicant had not met his burden of production and persuasion to mitigate the security concerns.

As noted above, Applicant contends the Judge's analysis of the mitigating conditions was cursory in nature. He takes issue with the Judge's conclusions that a particular mitigating condition did not apply and others only partially applied. In arguing that the Judge's analysis is flawed, he points to favorable evidence the Judge did not address in his analysis and asserts "the mitigating evidence in this case is substantial and it required a detailed analysis by the Judge as to why it was insufficient to override the government's doubts as to [his] security worthiness." Appeal Brief at 4. We do not find these arguments persuasive. DOHA decisions are not measured against a standard of perfection. *See, e.g.*, ISCR Case No. 99-0417 at 5 (App. Bd. Feb. 24, 2000). Judges have broad latitude and discretion in how to write their decisions, provided they issue decisions that (a) comply with pertinent provisions of the Directive, and (b) set forth their findings and conclusions with sufficient specificity and clarity that allow the parties and the Board to discern what the Judge is finding and concluding. *See, e.g.*, ISCR Case No. 00-0621 at 3-4 (App. Bd. Jan. 30, 2002). If the Judge satisfies those requirements, then it does not matter whether the Judge's decision is long or short, or whether particular passages or sections are brief or lengthy. In this case, a reading of the decision below persuades the Board that the Judge: (i) fulfilled his duty to consider the evidence as a whole, and (ii) issued a decision that is consistent with the requirements of pertinent provisions of the Directive and allows the parties and the Board to discern what the Judge found and concluded. Applicant's dissatisfaction with the Judge's choice to not write more extensively about evidence favorable to him is insufficient to demonstrate the Judge acted in a manner that is arbitrary, capricious, or contrary to law. *Id.*

Applicant's brief argues the alleged "debts are no longer being reported to the credit reporting services strongly suggests that the creditors consider these matters resolved." Appeal Brief at 5. In the decision, the Judge correctly cited ISCR Case No. 14-04802 at 3 (App. Bd. Mar. 21, 2016) for the proposition that a debt falling off a credit report does not establish meaningful,

independent evidence as the disposition of that debt. Furthermore, even if a debt is resolved, a Judge may still consider the circumstances surrounding the debt, such as lapses in resolving it, for what they reveal about the applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

Applicant raises a due process issue by asserting the Judge based his decision upon a matter not alleged in the SOR, *i.e.*, the delinquent tax debt. While he notes that non-alleged matters can be considered in the whole-person analysis, he argues the tax debt became the central focus of the Judge's analysis and was likely the basis for the adverse decision. In this regard, he asserts:

If the Judge intended to base his adverse Decision on the issue of the tax delinquencies that were cured and were not the subject of the SOR, he had a duty to say so explicitly. His failure to do so was error. This is especially true considering representations he made to [Applicant] during the hearing. The Judge and [Applicant] were discussing the option of [Applicant] paying the tax debts that were mentioned during the hearing. The Judge advised that it was purely [Applicant's] decision, but as far as he (the Judge) was concerned, it was the "old debts" (*i.e.*, the SOR debts) that would count in his decision and not the IRS debts (Tr. at 63). As things stand now, it appears that the Judge deviated from this statement to [Applicant] when he wrote his Decision. The Decision statement "His financial issues are recent" appears directly related to the tax payments as the newest of the SOR debts is more than three years old, the circumstances that caused the debt arrearage are a number of years older still, and the three mitigating conditions the Judge found [partially] applicable do not include a temporal element. [Appeal Brief at 7.]

This argument is not convincing. In the decision, the Judge stated, "The SOR did not allege that Applicant owed back taxes. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It can be used to assess Applicant's credibility, in determining the applicability of mitigating conditions, and during the whole-person analysis." Decision at 3, n.1. The Judge's quote is consistent with what the Appeal Board has previously stated on this issue. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017). Applicant has not identified any reason for the Board to conclude the Judge considered the tax debt as a basis for denying his clearance. Regarding the age of the SOR debts, the Board has stated that unpaid, delinquent debts constitute a continuing course of conduct that undermines any claim the debts are not recent within the meaning of the Directive. *See, e.g.*, ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010). We find no deviation between what the Judge said at the hearing and his analysis in the decision. From our reading of the decision, the Judge was referring to the alleged debts when he stated Applicant's financial issues are recent. Applicant has failed to show that he was denied the due process afforded him under the Directive.

In general, Applicant's arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Furthermore, his disagreement with the Judge's weighing of the evidence or his ability to argue for a different interpretation of the evidence is not sufficient to demonstrate the

Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant failed to establish the Judge committed any harmful errors. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

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

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
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