KEYWORD: Guideline F

DIGEST: Applicant challenges the Judge's finding that "he began to address the tax filing issues when he learned about his security clearance issues." He argues that he testified he started addressing these issues when he knew he was going to have to renew his clearance as opposed to when he received the SOR. This contention amounts to a matter of semantics. The Judge did not find that Applicant began addressing the tax filing issues when he received the SOR but instead she found he began addressing them "when he learned of the security issues." Applicant would have become aware of the Government's security concerns regarding his tax filing deficiencies about seventeen months before issuance of the SOR when he responded to questions in his security clearance application about those deficiencies. This challenge fails to establish any error. Adverse Decision Affirmed.

CASE NO: 19-02816.a1

DATE: 02/10/2021

DATE: February 10, 2021

In Re:	)	
	)	
----------	)	ISCR Case No. 19-02816
	)	
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 1, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 2, 2020, after the hearing, 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. For reasons stated below, we affirm the Judge's decision.

The SOR alleged that Applicant failed to file his Federal and state income tax returns for 2011 through 2018 as required and that he had three delinquent debts, *i.e.*, a child support arrearage for about $12,200 and two judgments totaling about $17,700. In responding to the SOR, Applicant admitted the SOR allegations with explanations. Applicant attributed his financial problems to his wife leaving him in 2010, which resulted in child support payments, custody disputes, and other financial challenges.

The Judge found against Applicant on all of the SOR allegations. She concluded:

> Applicant's delinquent debts are long-standing, and he acknowledges that he has not resolved some of them. Applicant stated that he settled one debt but he did not provide proof that he paid the settlement amount. Thus, from the record, even if he made the payment, he provided no evidence that he made any good-faith efforts before he received the SOR. He has had his wages garnished for child support arrearages. Applicant also had not filed his Federal and state income tax returns for a number of years and is just now getting a preparer to help him file. He has not received financial counseling. . . . Applicant's delinquent debts remain unresolved. Although he promises to address them and states he does not owe that much in delinquent debt, he did not provide proof of debt resolution. [Decision at 5.]

The Judge also concluded that, while Applicant has filed his Federal and state income tax returns for 2018 and 2019, he did not make enough timely progress on filing his tax returns for 2011-2017.

In his appeal brief, Applicant raises a number of challenges to the Judge's decision. He contends the Judge erred in some of her findings of fact. We examine challenged findings of fact to determine whether they are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contradictory evidence in the same record. Directive ¶ E3.1.32.1. First, Applicant challenges the Judge's finding that "he began to address the tax filing issues when he learned about his security clearance issues." Appeal Brief at 4, quoting from Decision at 2. He argues that he testified he started addressing these issues when he knew he was going to have to renew his clearance as opposed to when he received the SOR. This contention amounts to a matter of semantics. The Judge did not find that Applicant began addressing the tax filing issues when he received the SOR but instead she found he began addressing them "when he learned of the security issues." Applicant would have become aware of the Government's security

concerns regarding his tax filing deficiencies about seventeen months before issuance of the SOR when he responded to questions in his security clearance application about those deficiencies. This challenge fails to establish any error.

Applicant also challenges that Judge's finding that the child support arrearage continues to exist and that he and his ex-wife are trying to arrange an agreement that does not involve the child support system. In challenging this finding, Applicant points out that, as of September 2020, he had reduced the arrearage by 21%, that the money is actually owed to his ex-wife with the state acting as a collection agency, and that he and his ex-wife are negotiating a change to the child support payments that would reflect their current child custody arrangement. His arguments, however, fail to establish the Judge erred in this finding because he does not identify any fact that is unsupported or incorrect in the finding. Mere disagreement with the manner in which a Judge's finding is written does not establish error. When challenging a finding, a party must demonstrate that it is unsupported or incorrect to merit relief. Next, he challenges the Judge's finding that he stopped paying condominium fees in 2010 that resulted in a judgment against him. He points out that he testified he stopped paying the fees in 2011 and argues the Judge accepted Department Counsel's assertion about when the payments stopped without any supporting evidence. While the record supports this challenge, this error 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).

Arguing that the Judge did not interpret the evidence in a reasonable manner, Applicant challenges a number of the Judge's conclusions. We examine challenged conclusions to determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. First, Applicant challenges the Judge's conclusion that "he provided no evidence that he made good-faith efforts [to resolve the condominium fee judgment] before he received the SOR." Appeal Brief at 4, quoting from Decision at 5. He argues that, in his post-hearing submission (Applicant's Exhibit (AE) B), he provided emails from 2016 and 2017 showing efforts taken to resolve this debt that predate the SOR. We do not find this argument persuasive. The record evidence reveals that the condominium fee judgment was entered against Applicant in March 2013. Government Exhibit (GE) 8 at 1. Garnishment orders to enforce the judgment were issued in September 2013, June 2015, and May 2016. *Id*. at 2, 4, and 5. During a period of unemployment, Applicant's last garnishment order was "Dismissed no funds" in June 2017. GE 1 at 15 and GE 8 at 6. The emails that Applicant refers to reflect that he had received a court summons, which was apparently to renew the garnishment action. AE B at 4. The subsequent email exchanges between Applicant's father and the creditor to settle the debt were taken after receipt of the court summons. As we have previously stated, the satisfaction of a debt through the involuntary establishment of a garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor. *See, e.g.*, ISCR Case No. 16-03122 at 3 (App. Bd. Aug. 17, 2018). Likewise, we find no error in a conclusion that settlement negotiations fall short of a "good-faith effort" to resolve the debt when they are initiated in response to a pending court summons.

Applicant challenges the Judge's conclusion that he did not receive financial counseling. In doing so, he highlights his testimony in which he referenced the assistance his father provided him with his financial problems as well as the support his father's personal accountant provided.

Mitigating Condition 20(c) states, "*the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control.*" Directive, Encl. 2, App. A ¶ 20(c). For full credit under this mitigating condition, an applicant must not only show that he or she received financial counseling but also that the financial problem is resolved or is being resolved. *See, e.g.*, ISCR Case No. 19-03847 at 3 (App. Bd. Oct. 5, 2020). The pages of the transcript that Applicant cites in support of his arguments on this issue fail to show the Judge erred in her ultimate conclusion that Mitigating Condition 20(c) was not established.[1]

Applicant's other challenges to the Judge's conclusions, including her whole-person assessment, amount to a disagreement with the Judge's weighing of the evidence. These arguments are insufficient to establish error. It is well settled that an appealing party's ability to interpret record evidence in his or her favor does not demonstrate error below. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). In his challenges, he also asserts the Judge did not consider all the record evidence. There is a rebuttable presumption that the Judge considered all the record evidence, and the appealing party has a heavy burden when trying to rebut that presumption. *See, e.g.*, ISCR Case No. 18-00110 at 5 (App. Bd. Mar. 31, 2020). His arguments are insufficient to overcome that presumption. In short, the mere fact that a Judge concludes that favorable evidence presented by an applicant is not sufficient to outweigh or overcome the unfavorable evidence does not demonstrate that the Judge disregarded or ignored the favorable evidence or improperly weighed the evidence. None of Applicant's arguments are sufficient to demonstrate the Judge's decision was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 18-02592 at 5 (App. Bd. Jan. 6, 2021).

Finally, Applicant contends the "Judge considered testimony that was outside the scope of matters raised in the SOR." Appeal Brief at 9. Of note, Applicant was the only witness to testify at the hearing. In this assignment of error, the "testimony" that he cites is actually the questions that Department Counsel asked him during the hearing. For example, he challenges questions that Department Counsel asked him about the character of his military service, the foreclosure of a home, the repossession of motorcycle, and the amount of severance pay he received when employment contracts expired. He argues Department Counsel's "cross-examination was prejudicial and devoid of evidence that Counsel was seeking the truth of the issues raised in the SOR." *Id*. at 11. We do not find this argument persuasive. As long as a party's cross-examination is relevant and material to issues in the case, including the whole-person concept, it is proper even if it goes beyond the scope of either the direct examination or the SOR allegations. *See, e.g.*, ISCR Case No. 01-10347 at 4 (App. Bd. Sep. 17, 2002). Additionally, there is a rebuttable presumption that Federal officials and employees carry out their duties in good faith. *See, e.g.*, ISCR Case No. 18-02592 at 4. Applicant has not identified anything in the record that indicates or suggests a basis for a reasonable person to

[1] As a related matter, Applicant contends that neither the Judge nor Department Counsel attempted to determine whether his father was a legitimate and credible source for financial counseling. In a DOHA proceeding, an applicant has the burden to present mitigating evidence. Directive ¶ E3.1.15. The Judge and Department Counsel have no obligation to obtain or present mitigating evidence. *See, e.g.*, ISCR Case No. 19-02819 at 3 (App. Bd. Dec. 21, 2020). Similarly, Applicant states in his brief that he "had evidence but did not submit it because he believed it was not needed." Appeal Brief at 8. If he had evidence that would assist him, it was his obligation to present it.

conclude that Department Counsel acted improperly, unfairly, or unprofessionally in her cross-examination. He has failed to rebut the presumption that she carried out her duties in good-faith.

Applicant has failed to establish that any harmful error occurred below. 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 the interests of the 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 the 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