

Date: March 9, 2022

In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 21-01347

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 June 23, 2021, 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 December 7, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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: whether the Judge was biased against Applicant and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant's SOR alleges fourteen delinquent debts totaling in excess of \$40,000. The Judge found in Applicant's favor on all but two of the allegations, both of which are owed to the same creditor and arose from the same circumstances, an apartment eviction. One of them was the subject of a garnishment action.

Applicant's financial problems were related to a job termination in 2018 due to excessive tardiness resulting from alcohol abuse. His bills became delinquent, and he went through a difficult divorce. Even before the job termination, however, Applicant's financial condition had been "difficult for a long time." Decision at 2. He was living beyond his means, purchased a house that he could not afford, and had two vehicles repossessed, causing a "snowball effect," with the result that he could not afford the cost of alcohol and drug rehabilitation treatment. *Id.* Applicant often worked 60 to 80 hours a week and, "[t]o cope with a difficult marriage, Applicant stated that he 'self-medicated' by drinking excessively." *Id.* at 2-3. In 2004 and again in 2009 Applicant received inpatient care at "reputable inpatient treatment centers." *Id.* at 5. Though advised to abstain from alcohol, Applicant returned to drinking following completion of both courses of treatment. He entered another facility in 2019 and has abstained from consuming alcohol ever since.

The Judge's Analysis

Though acknowledging Applicant's success in resolving most of his debts, the Judge concluded that it is "highly probable" that he will incur significant debt in the future. Decision at 7. She stated that Applicant has not yet shown that he can "beat his disease" of alcoholism, which has had a detrimental effect on his finances. *Id.*

Applicant's finances and his alcohol consumption go hand in hand. When Applicant is drinking, his finances are in disarray. When he goes into treatment, he stops drinking, and cleans up his credit. Applicant has been abstinent since January 2019, over two years, and his finances have improved and are somewhat under control . . . Applicant has more work to do to show the Government that he can be consistently responsible with his financial affairs, in order to meet the eligibility requirements for access to classified information. *Id.* at 8.

Discussion

Applicant contends that the Judge was biased against him because of his struggles with alcohol abuse. He argues that she relied on this unalleged conduct as a basis for denying him a clearance rather than on a reasonable interpretation of his financial condition. Bias involves partiality for or against a party, predisposition to decide a case or issue without regard to the merits, or other indicia of a lack of impartiality. *See, e.g.,* ISCR Case No. 12-09421 at 2 (App. Bd. Nov. 15, 2017).

We have considered Applicant's arguments in light of the entirety of the record. As Applicant notes in his Appeal Brief, alcohol abuse was not alleged in the SOR. Department

Counsel did not move to amend the SOR to conform to the evidence nor did the Judge do so on her own motion, as provided in Directive ¶ E3.1.17. A Judge is precluded from raising security concerns outside the scope of the SOR without amending the SOR and giving the parties a reasonable time in which to prepare to address the amendment. However, conduct not alleged or otherwise fairly embraced by the SOR may be relevant for other purposes: making a credibility determination; evaluating the applicant's case for extenuation or mitigation; evaluating the extent to which the applicant has demonstrated rehabilitation; and in performing a whole-person analysis. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

The reasons underlying an applicant's financial problems are relevant matters for the Judge to consider in a Guideline F case. In conducting a mitigation analysis, for example, it is important to determine if those underlying reasons have been fully resolved or continue to exist in assessing whether the financial problems are likely to persist or recur. "*The Concern*" paragraph under Guideline F highlights the importance of the underlying reasons. It notes that financial distress can be caused or exacerbated by various conditions or behaviors, including "alcohol abuse or dependence." Directive, Encl. 2., App. A ¶ 18. The underlying reasons for an applicant's financial problems need not be alleged in the SOR. *See* ISCR Case No. 15-08255 at 3 (App. Bd. Aug. 22, 2017) (an SOR is an administrative pleading that is not held to the strict requirements of a criminal indictment and it does not have to allege every possible fact that might be relevant at the hearing). The reasons underlying alleged financial problems remain a relevant line of inquiry and an appropriate matter for the Judge to consider in rendering a decision even though they possibly could be, but are not, alleged under another guideline.

In the instant case, Applicant himself introduced his struggles with alcohol during his testimony on direct examination. Tr. at 37-41. During this testimony he addressed his drinking problem, its causes, and his attendance at multiple rehabilitation programs. "Q: Can you tell me why you used alcohol or drugs during that time? A: I believe it was to self-medicate and to . . . kill pain, emotional pain . . . during what I would call a very, very difficult marriage and relationship." Tr. at 38. Regarding the SOR allegations, in documents he himself prepared, Applicant attributed his financial difficulties to a job termination, and asserted that this firing was due to tardiness resulting from alcohol abuse which, among other things, was impairing his health. Response to SOR at 5; Security Clearance Application (SCA) at 35. During cross examination, Applicant acknowledged that the tardiness from work that underlay his job termination was affected by his alcohol abuse and that on numerous occasions he had been advised to abstain from alcohol. *Id.* at 62, 64. The evidence supports the Judge's findings that Applicant's finances had been stressed for a number of years and that he had twice undergone alcohol treatment after which he returned to drinking, the instance in 2009 at the urging of his now ex-wife. All in all, the record supports a connection between Applicant's alcohol problems and the financial concerns raised in his SOR. The Judge addressed Applicant's alcohol problems both in the context of his case for mitigation of these financial concerns and as part of her whole-person analysis. After considering the evidence as a whole and paying particular attention to the Judge's conduct of the hearing as reflected in the transcript, we conclude that a reasonable person would not find that the Judge exhibited an inflexible predisposition against Applicant due to his struggles with alcohol. Accordingly, Applicant has not met his heavy burden of persuasion that the Judge lacked the requisite impartiality. *See, e.g.*, ISCR Case No. 18-02867 at 3 (App. Bd. Jan. 15, 2020).

Applicant challenges a finding by the Judge that his marital problems were due to his drinking. Even if this finding was erroneous it does not appear to have exerted an effect on the overall outcome of the case. Therefore, any error in this finding is harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). Applicant cites to a Hearing Office case in support of his appeal. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019). The balance of Applicant’s appeal arguments alleges in effect that the Judge failed to consider all of the evidence or that she mis-weighed the evidence. Considering the record as a whole, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 20-00290 at 4 (App. Bd. Feb. 16, 2022).

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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

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

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