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

Date: March 9, 2022

In the matter of:	)	
	)	
---	)	ISCR Case No. 20-02787
	)	
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 January 25, 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 November 4, 2021, after close of the record, Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had approximately $39,000 in delinquent student loans and an additional $15,500 in delinquent consumer accounts. In responding to the SOR, Applicant admitted all debts, and the Judge found against Applicant on all allegations.

On appeal, Applicant asserts that the Judge erred in her findings of fact, gave an appearance that she was biased or less than impartial, and inquired into matters outside the SOR. Consistent with the following, we affirm.

Judge's Findings of Fact: The Judge's factual findings are summarized below, in pertinent part:

Applicant is 30 years old and graduated from college in 2014. Before beginning his current job, Applicant had three periods of unemployment: August 2017 to April 2018, January 2019 to May 2019, and August 2019 to November 2019.

Applicant lived with various family members after graduating college, but had an unstable living situation. He and his fiancée were expecting a child in February 2019 when they were asked to leave his parents' house. They moved in with his fiancée's parents and subsequently moved back in with his parents, but they were again asked to leave and were temporarily homeless.

On his December 2019 security clearance application (SCA), Applicant disclosed that he had approximately $44,000 in delinquent student loans and cited his unstable living and financial situation as the cause. On the SCA, he noted his intent to begin making monthly payments of $100. In his February 2020 clearance interview, Applicant confirmed the student loan debts and represented that he would contact the creditor that month and establish a monthly payment plan. In his October 2021 hearing, Applicant testified that his mother had earlier made his student loan payments for some period of time, but then stopped; he was unsure when she stopped payments or how much she paid. Applicant testified that he applied for a student loan rehabilitation program and began payments in March 2021. The program requires minimum monthly payments of $5 for nine consecutive months, and Applicant submitted documents confirming that he has made consistent monthly payments of $50. He will complete rehabilitation in December 2021.

Applicant does not know what his monthly payments will be when he completes the rehabilitation program. His current monthly expenses outstrip his monthly income. Applicant believes that his student loans will ultimately be forgiven.

The SOR also alleges a car repossession debt, two medical debts, and a dental debt, totaling approximately $15,500. Both in his background interview and at hearing, Applicant stated his intent to file bankruptcy to resolve his delinquent debts. Post-hearing, Applicant submitted documents indicating that he had recently contacted these four creditors and started payments on three of the four.

Judge's Analysis: The Judge's analysis is quoted below, in pertinent part:

> Applicant's mother paid his student loans for a period. After his mother stopped paying them, Applicant was unable to pay them himself. Although he indicated to the investigator that he was going to begin paying them in 2020, he did not. In 2021, he entered a student loan rehabilitation program, and has made consistent monthly payments of $50. If he makes the remaining payment, his loans will be out of default and a new payment program will be implemented. Applicant did not understand the specifics of what the new program would require. At this point, his loans remain in a default status, but are likely to be removed from that status. The financial statement on his student loan rehabilitation application reflects he has a deficit of approximately $500 each month.

. . .

> Applicant is supporting his fiancée and their child and does not have the means at this time to pay his delinquent debts. I am not confident that he has a realistic understanding of how his student loan rehabilitation program works, nor has he planned for the likely increase in monthly payments once the loans are no longer in a default status. Although the issues that caused his financial problems may have been beyond his control, Applicant did not begin to address his defaulted student loans until a year after he completed his SCA and was interviewed by a government investigator. He did not make payments on the other legitimate delinquent debts until after his hearing. He has not acted responsibly regarding his finances. [Decision at 6–7.]

Discussion

Errors in Findings of Fact

Applicant argues that the Judge erred in several findings of fact. For example, he highlights that she erred in stating the dates for his periods of unemployment and erred by one month in stating when he would complete rehabilitation of his student loans. Our review of the record confirms that any such errors were harmless, as they likely had no effect on the Judge's decision. *See, e.g.,* ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020).

More importantly, Applicant argues that the Judge erred in finding that his student loans were delinquent, as collections on defaulted Federal student loans have been paused since March 2020.[1] Applicant is raising the issue of the Federal pause for the first time in this appeal. In his March 2021 answer to the SOR, submitted during the Federal pause, Applicant admitted that the seven Federal student loans were delinquent. At hearing, he did not dispute the delinquencies, but instead highlighted his recent efforts to rehabilitate the student loans. In her decision, the Judge did not discuss the Federal pause. The record, however, contains two credit reports (one dated October 2020 and the other April 2021) pulled during the pause that reflect Applicant's student loans remained in a delinquent status. Government Exhibits 2 and 3. Those credit reports provide a sufficient basis for the challenged finding. Applicant has failed to establish the Judge's finding regarding the student loans was flawed. *See generally*, ISCR Case No. 20-02219 at 3 (App. Bd. October 28, 2021) for examples of delinquent student loans subject to the Federal pause that were not mitigated.

Bias

In his appeal brief, Applicant takes issue with both the tone and the content of the Judge's questions and her dialogue with him. To the extent that Applicant is arguing that the Judge was biased, we do not find that argument convincing. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden

[1] Under the CARES Act of March 2020, Federal student loans were placed in forbearance and collection on defaulted student loans was paused. By a series of executive orders, that protection has been extended through May 1, 2022. *See, e.g.,* https://studentaid.gov/announcements-events/covid-19.

of persuasion. *See, e. g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020). The issue is not whether Applicant personally believes the Judge was biased or prejudiced against Applicant. Rather, the issue is whether the record contains any indication the Judge acted in a manner that would lead a reasonable person to question the fairness and impartiality of the Judge. *See, e.g.*, ISCR Case No. 01-04713 at 3 (App. Bd. Mar. 27, 2003).

Applicant cites several examples in which the Judge questioned him about particular expenses or debts and then either did not allow him to answer fully or appeared to be dismissive of his answer. While the questioning and comments were occasionally sharp, the examples cited by Applicant do not rise to the level that might lead a reasonable person to question the Judge's impartiality, nor do they rebut the presumption that the Judge ultimately decided the case on the record evidence. Applicant has failed to meet the heavy burden associated with a demonstration of bias on appeal. *See, e.g.*, ISCR Case No. 09-07395 at 2 (App. Bd. Sep. 14, 2010).

Conduct Not Alleged in SOR

Applicant also alleges that the Judge inquired into matters that "weren't in the statement of reasons" and "weren't supposed to be discussed on record." Appeal Brief at 2. Applicant appears to be referring to the Judge's inquiry into non-alleged debts that were reflected on documents that he submitted. Tr. at 47-49; Applicant's Exhibit D. A judge may consider non-alleged debts (a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017). Our review of the transcript confirms that the Judge's inquiries were confined to financial issues alleged on the SOR, closely-related debts, or issues of general financial health and financial planning. Our review of the decision reveals that the Judge only discussed the alleged debts in evaluating Applicant's evidence in mitigation. We find no basis for concluding that the Judge considered non-alleged debts or other matters in an inappropriate manner. Applicant's argument does not establish error by the Judge.

New Evidence

Finally, Applicant has provided updated information regarding his debts and his fiancée's employment. Those are new matters not contained in the record, which we cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board").

In conclusion, Applicant has not identified any harmful error in the Judge's handling of his case or in her decision. The Judge examined the relevant evidence and articulated a satisfactory explanation for her 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