DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: October 26, 2022

In the matter of:	)	
	)	
-----	)	ISCR Case No. 20-01110
	)	
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 20, 2022, 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 decision on the written record. The Government's written case was submitted in February 2022. A copy of the file of relevant material (FORM) was provided to Applicant, and he submitted documents in response. On September 13, 2022, after consideration 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 a child support arrearage and a delinquent medical account. Applicant denied both allegations. The Judge found favorably for Applicant on the medical account and adversely on the child support arrearage. On appeal, Applicant asserts that the Judge improperly relied on credit reports, that she was biased, and that she did not receive all the evidence that he submitted. Consistent with the following, we affirm.

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

Applicant is in his late forties and single, with two adult children. The SOR alleges that Applicant has child support arrearages totaling approximately $39,000. The allegation is supported by credit bureau reports from 2018 and 2021.

In his answer to the SOR, Applicant explained that the arrearage was previously adjudicated at a security clearance hearing in 2010, at which time the balance was $28,000. At the 2010 hearing, Applicant presented evidence that he had established a payment plan to address the debt. Under the plan, $400 would be withheld from his monthly wages, with $247 directed to his ongoing support obligation and $153 applied to the arrearage. It appears from the 2010 decision that the plan had been recently established and that Applicant had not yet made any payments at the time of his May 2010 hearing. Since the 2010 decision, the arrearages have increased to the alleged amount.

In his May 2018 SCA, Applicant stated that he is paying the minimum amount required on his debt and attempting to have it recalculated. In his SOR answer, Applicant stated that his child support payments have been automatically withheld from his wages for many years, but that those payments are not reflected in the balance on his credit report. He provided pay stubs for October – December 2013, which reflected $4,450 in child support payments for 2013.

Applicant provided a copy of a March 2016 email from a case worker in the state where the child support order was entered. In the email, the case worker stated that the state did not add interest to Applicant's child support arrears; that the amount due reflected the actual court ordered payments; that the agency had not received any payments from Applicant since October 2013; that they had received a payment of approximately $978 in June 2015 "as a result of a hit on [Applicant's] bank account"; and that the case worker would agree to payments of $250 per month after the court-ordered support obligation terminated in May 2016 upon emancipation of one of the children. Decision at 3, citing to AE F.

Applicant provided receipts indicating he made payments of $250 in April 2016 and May 2016 and payments of $150 in February 2017, March 2017, and January 2018. He did not provide evidence to show any additional payments made since his 2010 hearing, other than the 2013 payments made through his employer. Decision at 2–3, citing to Item 3; AE G to J.

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

> Applicant's child-support arrearages have existed for many years. He has repeatedly made numerous claims that he has made payments; should be given credit when the children lived with him; he should be given credit for air fare he paid; and that he made payments to other states that were not credited. He noted on his 2018 SCA that he was having the state where the order was issued recalculate what he owed. It has been four years since that statement, and he has not provided evidence of action he has taken. Applicant may have legitimate claims for why his arrearages should be reduced, but he has provided insufficient evidence to me to

make that determination. He needs to resolve it with the state and he has not. The evidence he provided does not show he has consistently been making payments. Applicant has not resolved his child-support arrearages. There is insufficient evidence this debt was beyond his control. He has not presented evidence that he has acted responsibly, that there are clear indications the debt is being resolved, or he made a good-faith effort to repay the arrearages. [The mitigating conditions] do not apply. [Decision at 6–7.]

Discussion

Reliance on Credit Reports

Applicant argues that the Judge erred in "accepting uncalculated and falsely reported sums" on his credit reports, as he disputes the amount owed for child support. Appeal Brief at 3. Putting aside Applicant's failure to object to the Judge's consideration of these documents, we note that credit reports are generally admissible as part of the Government's case in chief. A credit report qualifies as a record compiled or created in the regular course of business and, therefore, is admissible without an authenticating witness. Directive ¶ E3.1.20. There is nothing on the face of the challenged documents to suggest that they are other than what they appear to be. The Judge did not abuse her discretion by admitting and relying upon the credit reports." *See, e.g.,* ISCR Case No. 18-00310 at 3 (App. Bd. Dec. 19, 2018).

Bias

Applicant alleges bias, based on the fact that the evidence in the current case is "the same disputed and incorrect information" as at his 2010 hearing and that the Judge in 2010 found favorably for him. Appeal Brief at 1. We do not find Applicant's 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 of persuasion. 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. 20-02787 at 3–4 (App. Bd. Mar. 9, 2022).

The evidence of record establishes that Applicant faced an arrearage of approximately $28,000 in 2010; that he entered into a payment plan around the time of his May 2010 hearing; that the Judge relied upon this payment plan in finding the debt mitigated; that Applicant made some payments in 2013; that he made five payments between April 2016 and January 2018; and that his arrearage had increased to approximately $39,000 by August 2018. In sum, the Judge in the case at hand faced significantly different facts than did her counterpart in 2010 and based her decision squarely on what Applicant has done—or failed to do—since his last hearing. Applicant has failed to meet the heavy burden associated with a demonstration of bias on appeal.

Missing Evidence

Applicant also alleges that the Judge received incomplete documents due to a "mishandling of evidence." Appeal Brief at 5. He asserts that his response to the SOR included a "five-page document showing evidence of payments paid from 2016 to 2018 through automated payments by [credit union]." *Id*. Our review of the record confirms that Applicant's answer to the SOR contained all documents he listed as attached to it. Although it does not include the five pages from the credit union, he submitted what appear to be those documents with his response to the FORM, and the Judge explicitly referenced those payments. *See* Decision at 3. We find no basis to conclude that evidence was mishandled or that the Judge failed to receive any evidence that Applicant submitted.

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: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

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