

Date: October 13, 2022

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In the matter of: )  
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----- ) ISCR Case No. 21-02693  
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Applicant for Security Clearance )  
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**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 December 29, 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 decision on the written record. On June 7, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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 on appeal: whether the Judge’s findings of fact contained errors, whether the Judge failed to consider all of the evidence in the record, or whether she mis-weighed the evidence, resulting in a decision that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

## **The Judge’s Findings of Fact and Analysis**

Applicant’s SOR alleged four student loan debts owed to a bank, all incurred while he was an undergraduate. At the end of 2021 the bank notified Applicant that it was no longer attempting to collect these debts and that he was not required to make payments. Applicant “claimed that he did everything he could to satisfy these debts.” Decision at 2. These claimed efforts included partial payments, an attempt to set up a payment plan, an attempt to remove the co-signer, an attempt to amend the monthly payments, and attempts to pay the debts. Applicant “provided no documentary proof to support these assertions.” *Id.*

Applicant attributed his inability to make payments to a co-signer, insofar as the bank would not agree to negotiate with him without that person’s participation. Applicant asserted that the co-signer was “off the grid, . . . uncontactable, and unwilling to cooperate with [bank] in any circumstances.” Decision at 2. He also asserted that the bank had been “held accountable in 2016 for illegal and unethical practices,” which impaired his ability to resolve his debts. He provided no documentary proof of his contentions. *Id.* at 2-3.

Applicant took overseas vacations in 2017 and 2018, and in 2021 he purchased an automobile that entailed a monthly payment in excess of \$800. Later that year he purchased another car, the monthly payments for which was a little over \$1,000. These accounts are current. Applicant was unemployed from May through December of 2020, due to the Covid-19 pandemic.

Though Applicant’s difficulty in resolving his student loans may have been affected by his unemployment, he did not demonstrate responsible action in regard to these debts. He failed to provide documentation in support of his claimed efforts to resolve his debts, there being “no evidence in the record, other than his claims, that he acted responsibly.” Decision at 5. That Applicant’s debts are now legally unenforceable does not mitigate his failure to have taken more aggressive action to satisfy his obligations. The Judge noted Applicant’s expenditures on things such as vacations and cars, which shows that “he picks and chooses” which creditors to pay. Decision at 5. The Judge concluded that Applicant had not met his burden of persuasion that he should have a security clearance.

## **Discussion**

Applicant challenges the Judge’s findings of fact, arguing that she did not address evidence favorable to him. This evidence includes his attempts to persuade his co-signer to cooperate in resolving the debts, the likely economic benefit of his formal education, information that could have been accessed through a URL cited in the Response to the File of Relevant Material (FORM), the purposes for his foreign travel, etc. Applicant attaches to his brief a copy of the information that he contends would have been available through the URL.<sup>1</sup> Applicant’s appeal submission includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. We

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<sup>1</sup>A Judge is not responsible for creating or reconstructing evidence, including documents retrievable by means of a URL or a hyperlink. For one thing, “[g]iven the dynamic and changing nature of the internet,” a Judge cannot be certain that documents accessed in this manner are identical to those an applicant seeks to introduce into evidence. *See, e.g.*, ISCR Case No. 00-0628 at 3-4 (Apr. 26, 2002). In any event, a Judge may not act as a surrogate for either party. *See, e.g.*, ISCR Case No. 17-04388 at 3 (App. Bd. Aug. 1, 2018).

note that in his security clearance application Applicant states that one of his foreign trips was for educational purposes. Item 2 at 34. This is at least somewhat inconsistent with the Judge's finding that both trips were vacations. Accordingly, the challenged finding about the purpose of this trip is in error. However, we find no reason to conclude that, had this error not been made, the decision would have turned out differently. Accordingly, this error is harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020).

We have examined Judge's findings as a whole and conclude that they are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 18-02581 at 3. A Judge cannot be expected to make findings about everything in a file, which would be a virtual impossibility. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020). Contrary to Applicant's arguments on appeal, the Judge's findings capture the essential facts underlying the SOR allegations. Applicant has cited to no harmful error in the Judge's findings of fact.

Applicant's arguments, including some of his challenges to the Judge's findings, constitute in large measure a disagreement with the manner in which the Judge weighed the evidence. However, an ability to argue for a different interpretation of the evidence is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3. Applicant's arguments are not sufficient to rebut the presumption that the Judge failed to consider all of the evidence in the record. *Id.* Moreover, despite Applicant's citation to the whole-person factors described in Directive, Encl. 2, App. A ¶ 2(d), we conclude that the Judge satisfied these requirements insofar as she based her ultimate decision on the record evidence viewed as a whole. *See, e.g.*, ISCR Case No. 18-02925 at 3 (App. Bd. Jan. 15, 2020).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, including in particular her comments regarding the absence of corroborating evidence. *See, e.g.*, ISCR Case No. 17-01193 at 4 (App. Bd. Jan 22, 2019) (It is reasonable to expect an applicant to present corroborating documentation of his or her efforts to establish mitigation of the concerns raised in the SOR). 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