



effort to resolve it; that she did not act responsibly under the circumstances; that the debt was recent, ongoing, and continued to cast doubt on her reliability, trustworthiness, and good judgment; and that none of the mitigating conditions applied to that allegation.

Applicant raised the following issues on appeal: whether the Judge was biased and whether his decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

### Bias

Applicant's brief states:

[T]he Judge admitted on record to being a member of the . . . Credit Union and having financial ties with the institution. He stated, he was disappointed that the Credit Union did not receive payment for the debt. The Judge even states in his ruling, that the "applicant's financial stability came at the expense of the credit union." These ties and the above contradictions show the Judge was unable to separate his personal attachments to the Credit Union from this case. I believe he ruled against me keeping my security clearance based on his bias and not on a fair assessment of a potential risk to national security. [Appeal Brief at 2.]

During the hearing, the Judge noted he was a member of that credit union. Tr. at 27. However, we find nothing in the Judge's decision or in the record to support Applicant's assertion that the Judge expressed his disappointment that the credit union debt was not paid.

To address Applicant's bias claim, it is helpful to examine 28 U.S.C. § 455, which sets forth the disqualification requirements for Federal judges. Under § 455(b)(4), a Federal judge shall disqualify himself when he "has a financial interest in the subject matter in controversy, or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding[.]" The term "financial interest" is defined in the statute. That definition provides, "The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual saving association, or a similar proprietary interest, is a 'financial interest' in the organization only if the outcome of the proceeding could substantially affect the value of the interest." *Id.* at § 455(d)(4)(iii). Mere membership in a credit union is similar to the proprietary interest of being a depositor in a mutual saving association and is disqualifying only if the outcome of the proceeding could substantially affect the value of the Judge's financial interest in that institution.

It should go without saying that the credit union identified in the SOR allegation is not a party to Applicant's security clearance proceeding. In this proceeding, moreover, the "subject matter in controversy" is Applicant's security clearance eligibility. As the Appeal Board has repeatedly stated in the past, a security clearance adjudication is not a debt collection proceeding, but rather is aimed at evaluating an applicant's judgment, reliability, and trustworthiness.<sup>1</sup> *See,*

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<sup>1</sup> For debts involving financial institutions (banks, credit unions, savings and loan associations, mortgage lenders, etc.) or commercial entities (consumer debts), alleging the identity of the creditor in an SOR allegation is helpful to place the applicant on notice of the specific debt at issue. However, the identity of the creditor for those types of debts

*e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). The outcome of the Judge’s security clearance determination is likely to have no effect on the value of his financial interest in the credit union. Given these circumstances, a reasonable, well-informed observer with access to all the facts is unlikely to question the Judge’s impartiality in this case. *See, e.g., United States v. Stone*, 866 F.3d 219, 229-31 (4<sup>th</sup> Cir. 2017). We conclude that Applicant failed to meet her heavy burden on her to rebut the presumption that a Judge is impartial and unbiased. *See, e.g., ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020).*

### Weighing Evidence

Applicant argues the Judge’s mitigation analysis and whole-person assessment are defective. For example, she points to the Judge’s findings and conclusions that were favorable to her and argues they establish her security clearance worthiness. However, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g., ISCR Case No. 19-01431 at 4 (App. Bd. Mar. 31, 2020).*

### Conclusion

Applicant failed to establish the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 national security.”

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is generally of no significance in the Judge’s analysis in determining whether the applicant acted responsibly in acquiring, handling, or resolving such debts.

**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