

Date: January 23, 2023

In the matter of:	)	
	)	
	)	
-----	)	ISCR Case No. 21-00969
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 18, 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 October 31, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

## **The Judge's Findings and Analysis**

Applicant is in his late 60s and is married with three adult children. He entered the U.S. military in 1972 and retired in 1995. During his military career, Applicant's various assignments required him to supervise between 150 and 300 personnel. He began working for his current employer, a Defense contractor, in early 2022 and has held a security clearance for many years.

Applicant's SOR alleges five delinquent debts to the U.S. Department of Education (DoE) for student loans taken out for the benefit of two of his children. The total amount of such debt is \$280,000. His financial problems began in 2011 when he became ill and had to undergo cardiovascular surgery. While recuperating, Applicant's wife took over family finances and was not aware that their obligation to repay the student loans had begun. Beginning in 2012 DoE garnished Applicant's wages, resulting in payments of between \$800 and \$1,200 a month. However, in May 2018 Applicant lost his job and did not regain employment until September of that year at a salary lower than he previously had received. Applicant did not resume payments on the student loan debts.

Applicant's financial difficulties were also affected by an IRS bill for \$22,000 owed due to Applicant's having taken distributions from his 401(k) plan. Since 2021, he has been paying off this obligation through a payment plan. In late 2020, the Federal Government issued a moratorium on repayment of student loans, which was set to expire in August 2022, at which point Applicant asserts that he will resume repayment on the debts.

Applicant has between \$3,000 and \$4,000 after-expense income each month, owns a home worth \$700,000, and has an emergency expense fund of about \$2,000. In 2015, he purchased a yacht for about \$20,000, for which he paid cash. He also purchased a vehicle for \$47,000, financing it through payments of about \$1,220 a month.

The Judge noted circumstances that affected Applicant's financial problem that were beyond his control, such as his illness and lengthy recuperation. However, he concluded that Applicant had not demonstrated responsible action in regard to his debts. Though acknowledging that student loans were still in deferment as of the close of the record and that Applicant received a substantial bill from the IRS, he stated that these circumstances arose two to three years after Applicant regained employment in September 2018. Accordingly, the Judge concluded that these events cannot explain or excuse Applicant's failure to have resumed addressing his SOR debts during the intervening years.

The Judge described Applicant's military career as "stellar" and noted his having held a clearance for many years. However, he also cited to the length of time Applicant's account has been delinquent and to his other discretionary expenditures—the yacht club fees and the vehicle—that left him with "lingering concerns about [Applicant's] financial judgment[.]" Decision at 6.

## **Discussion**

Applicant challenges some of the Judge's findings of fact. We examine a Judge's findings to see if they are supported by such relevant evidence as a reasonable mind might find adequate to

support a conclusion in light of all the contrary evidence in the same record. Directive ¶ E3.1.32.1. Applicant challenges the Judge’s finding that he owes \$280,000 on the student loans, arguing that the true amount is about \$199,000. The record evidence is not consistent as to the total amount of Applicant’s delinquent debts. The Judge’s finding is supported by Applicant’s answers during his security clearance interview. Government Exhibit (GE) 7, Clearance Interview Summary, at 4. However, Applicant testified that he believed this number to be inaccurate. Tr. at 33. The SOR allegations total a little less than \$199,000, which Applicant admitted in his Answer to the SOR and certified as accurate during his hearing testimony. Tr. at 15-16. In addition, GE 2, Credit Report dated May 2018, lists debts in an amount closer to the SOR allegations than to the assertion in GE 7. After considering the record as a whole, we conclude that the greater weight of the evidence does not support a finding of \$280,000. Applicant also challenges the Judge’s finding that his house is worth \$700,000. We agree with Applicant that the record includes no evidence as to the value of Applicant’s house, although he testified that he owes about \$110,000 on his mortgage. Tr. at 74-75. The challenged finding is erroneous. However, we note that the Judge did not rely on these findings in his analysis, focusing instead on a lack of evidence of meaningful debt resolution efforts following Applicant’s 2018 reemployment and on discretionary spending that could have been better directed toward resolving the debts at issue here. We conclude that, even if the Judge had not made these errors, his overall decision would have been the same. Accordingly, we conclude that the errors are harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). The Judge’s material findings of security concern are supported by substantial record evidence. *Id.*

Applicant cites to evidence of his military service, the circumstances underlying his financial difficulties, his efforts to pay his student loan debts as well as the DoE garnishment action, his payment plan to resolve his unexpected Federal tax obligation, and other matters that he argues support his case for a favorable result. However, the Judge made findings about these matters and discussed several of them in the analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record nor shown 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 (App. Bd. Jan. 15, 2020). Contrary to Applicant’s argument on appeal, the Judge complied with the requirements of Directive ¶ 6.3, in that he considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 18-02925 at 3 (App. Bd. Jan. 15, 2020).

We have considered the entirety of Applicant’s contentions on appeal and conclude that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has cited to no harmful error in the Judge’s findings or analysis. 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