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: June 2, 2023

In the matter of:	)	
----	)	ISCR Case No. 20-02355
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 31, 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 the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) and Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 4, 2023, after close of 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.

As amended, the SOR alleged that Applicant owed the Federal Government approximately $113,000 in delinquent taxes for seven tax years (2010, 2011, 2014, 2015, 2016, 2017, and 2018); that he owed a state approximately $39,000 in delinquent taxes for three tax years (2010, 2011, and 2012); and that he failed to file, as required, his Federal and state income tax returns for eight years (2011, 2012, 2014, 2015, 2016, 2018, 2019, and 2021). The Judge found in favor of

Applicant on the Federal tax debt allegations and against him on the other allegations. The Judge concluded:

> Applicant has made significant progress towards satisfying his delinquent federal and state income taxes. However, given the length of time that his taxes were delinquent, and the inconsistency with which he has made payments over the last 18 months, it is not clearly consistent with the national security at this time to grant Applicant a security clearance. [Decision at 1.]

On appeal, Applicant's Counsel contends that the Judge erred by failing to consider all of the record evidence. For example, he argues that Applicant's "outstanding federal tax debt has been fully resolved, which is significant and something that was overlooked by the Administrative Judge[.]" Appeal Brief at 4. This argument is simply not accurate. The Judge found that, by September 2021, Applicant had satisfied his Federal tax delinquencies by making monthly payments ranging between $1,000 and $22,000. Decision at 3. Additionally, as noted above, the Judge found in favor of Applicant on the Federal tax debt allegations. Applicant's Counsel further argues the Judge did not take into account that "Applicant had/has a plan in place to resolve his outstanding [state] tax obligations." Appeal Brief at 9. This argument is also baseless. The Judge found that Applicant had established a payment plan to resolve his remaining state tax deficiency and had made five payments totaling about $10,000 under that plan. Decision at 3. In short, none of the arguments presented are sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant's Counsel also argues that the Judge erred in his analysis by misapplying the mitigating conditions and whole-person concept. These arguments amount to a disagreement with the Judge's weighing of the evidence. For example, he contends that Applicant has learned from his past mistakes and highlights that Applicant's divorce was a circumstance beyond his control that contributed to his financial problems. However, determining the weight to be given to the evidence is a matter within the special province of the Judge as the trier of fact. *See, e.g.*, ISCR Case No. 18-00857 at 4 (App. Bd. May 8, 2019) (citing *Inwood Laboratories, Inc. v. Ives Laboratories Inc.*, 456 U.S. 844, 856 (1982)). Counsel's arguments for an alternative interpretation of the evidence are not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2.

In his brief, Applicant's Counsel relies on hearing-level decisions in unrelated Guideline F cases to argue the Judge erred in his analysis of this case. His reliance on hearing-level decisions is misplaced because each case must be judged on its own merits. AG ¶ 2(b). As the Board has previously stated, how particular facts scenarios were decided at the hearing level in other cases is generally not a relevant consideration in our review of a case. Hearing Office decisions may be useful to highlight a novel legal principle; but only in rare situations—such as separate cases involving spouses, cohabitants, or partners in which the debts and the financial circumstances surrounding them are the same—would the adjudication outcome in another case have any meaningful relevance in our review of a case. The Hearing Office decisions that Applicant's Counsel cites have no direct relationship or unique link to Applicant's case that would make them relevant here. *See, e.g.*, ISCR Case No. 20-00516 at 3 (App. Bd. Mar. 23, 2023).

Applicant's brief fails to establish that the Judge committed any harmful error. *See* Directive ¶ E3.1.32. The Judge examined the relevant evidence and articulated a satisfactory explanation for the 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* AG ¶ 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
Chair, Appeal Board

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board