



**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: December 26, 2023

In the matter of:	)	
	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 3, 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 the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 25, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Wilford H. Ross denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant has eight delinquent debts. In responding to the SOR, Applicant admitted all of the allegations. The Judge found against Applicant on seven of the eight allegations. Applicant is in his mid-50s, divorced from his second spouse, and retired from the military. Decision at 2. In summarizing his decision, the Judge held that seven debts, totaling about \$21,000, were not mitigated, while the SOR allegation found in Applicant’s favor was resolved

through involuntary deductions from his retirement pay. *Id.* at 6. Applicant has not made any recent payments on the remaining debts and has no current plans to make payments despite their existence for several years. Applicant is fully aware of the impact that delinquent debt has on his security eligibility, but “has not done sufficient work to resolve the issue.” *Id.* at 7.

Applicant’s appeal brief suggests that the Judge failed to consider matters beside his credit history and that he felt as if he lacked a fair chance at the hearing to gain clearance eligibility. He also argues that he has been working on his credit report and will continue to do so, including by filing bankruptcy in the future.

There is no reason to believe that the Judge did not consider all of the record evidence or Applicant’s testimony at the hearing. There is a rebuttable presumption that the Administrative Judge considered all of the record evidence, and the appealing party has a heavy burden when trying to rebut that presumption. *See, e.g.*, ISCR Case No. 18-00110 at 5 (App. Bd. Mar. 31, 2020). Applicant’s submission of 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*. An applicant’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 that 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Regarding Applicant’s general assertion that he did not have a fair hearing, we construe this assertion as a claim that the Judge was biased against him and that he was denied due process. This assignment of error is unpersuasive. 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. *See, e.g.*, ISCR Case No. 17-02391 at 2 (App. Bd. Aug. 7, 2018).

We examined the entire record and Decision, paying particular attention to the transcript of the hearing. We find nothing therein that would cause a reasonable person to question the Judge’s impartiality in this case. In fact, the record shows the Judge and Department Counsel were courteous, instructive, and receptive to Applicant’s testimony, and the Judge held a full and fair hearing. The Judge rescheduled the hearing on two occasions at Applicant’s request to allow him to prepare and obtain representation. The Judge told Applicant he would continue the hearing for as long as necessary and he left the record open for Applicant to submit evidence after the hearing. Applicant did not submit any post-hearing documentary evidence on his behalf. Decision at 2; Tr. at 4-11. We find no reason to conclude that Applicant was denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 12-10122 at 2-3 (App. Bd. Apr. 22, 2016).

Applicant failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for his decision, and the record evidence is sufficient to support the Judge’s findings and conclusions. 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). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

**Order**

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

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Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Gregg A. Cervi

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Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board

Signed: Allison Marie

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Allison Marie  
Administrative Judge  
Member, Appeal Board