DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
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(703) 696-4759

Date: April 11, 2023

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In the matter of:)
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----) WHS-C 22-02452-R
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)
Applicant for Security Clearance)
_____)

APPEAL BOARD DECISION

<u>APPEARANCES</u>

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 July 8, 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). On July 13, 2021, Applicant acknowledged receipt of the SOR and indicated that he would not submit a reply.

On October 3, 2022, DoD Consolidated Adjudication Services (CAS) revoked Applicant's eligibility for access to classified information, and he appealed that revocation under the provisions of DoD Manual (DoDM) 5200.02. On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum that DoD civilian or military personnel whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum shall be provided the opportunity to pursue the DOHA hearing and appeal process set forth in the Directive. As a result of Secretary Moultrie's memo, Applicant was

given the opportunity to receive the process set forth in the Directive, and he elected that process. Tr. at 4-5.

On February 23, 2023, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Findings of Facts and Conclusions

Applicant, who is in his 50s, has been employed by DoD agencies since 2015. He served in the military and retired in paygrade E-7. He has held a security clearance for many years. He is divorced with three children. He is entitled to receive child support payments from his ex-wife, who is about $60,000 behind on those payments. His current annual salary is about $113,000, and he has a net monthly remainder of about $6,000 to $7,000. Applicant "testified that he could not point to anything specific that caused him to fall behind on his bills, except that he overextended himself. (Tr. 32) He admitted that some of his debts had 'fallen off the radar' until he was notified that his hearing was being scheduled. (Tr. 46)" Decision at 3.

The SOR alleged that Applicant had eight delinquent debts totaling about $29,600. In late 2022, Applicant paid two of those debts (Debt # 6 for $194 and Debt #8 for $124). In early 2023, he entered into payment agreements on five of the debts, promised to pay the balances in monthly increments, but did not progress beyond making the initial payments on them. The Judge concluded that Debt #5 was unresolved, and Applicant's actions regarding six of the other debts were not taken until he learned his security clearance was in jeopardy. "Payments in response to the pressure of qualifying for a security clearance are not made in 'good faith' within the meaning of [Mitigating Condition 20(d)]." Decision at 6. Applicant failed to demonstrate a track record of financial responsibility sufficient to mitigate the alleged security concerns.

Discussion

Bias and Impartiality

Interspersed throughout Applicant's appeal brief is the claim that the Judge was biased against him. 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 on appeal. *See, e. g*., ISCR Case No. 03-07245 at 3-4 (App. Bd. May 20, 2005). Bias is not demonstrated merely because a Judge reached adverse conclusions or found against the appealing party. Moreover, bias is not demonstrated merely because a party can demonstrate a Judge committed a factual or legal error. The standard is not whether a party personally believes a Judge was biased or prejudiced against that party, but rather whether the record of the proceedings below contains any indication that the Judge acted in a manner that would lead a reasonable, disinterested person to question the fairness and impartiality of the Judge. *Id*. In this case, Applicant failed to meet his burden of persuasion on this issue.

As a related matter, Applicant also contends that the adverse decision was based on the Judge's "extreme . . . personal opinions versus the actual facts." Appeal Brief at 1. We find no

merit in this argument and, based on our review, conclude the Judge's decision was a fair and reasonable application of the pertinent Guideline F disqualifying and mitigating conditions to the facts in this case.

Weighing of the Evidence

In general, Applicant's appeal arguments amount to a disagreement with the Judge's weighing of the evidence. For example, Applicant notes that his delinquent debts "happened over 6 years ago and there is no evidence that there is a frequency nor recurring financial infractions." Appeal Brief at 1. However, an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.*, ISCR Case No. 17-03146 at 2 (App. Bd. Jul. 31, 2018). Applicant further argues that he could not be compromised due to his financial problems, that there is no evidence he poses a threat to the national interest, and that the security concerns reflected in other adjudicative guidelines do not apply to him. To the extent that he is arguing his financial problems do not raise security concerns, we do not find that argument persuasive. It is well established that a history of financial problems and an inability to satisfy debts may raise security concerns under Guideline F. Directive, Encl. 2, App. A ¶¶ 19(a), and 19(c). For example, the Guideline F security concerns encompass the risk that applicants who are financially irresponsible might also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See, e.g.,* ISCR Case No. 16-04112 at 3-4 (App. Bd. May 28, 2019).

In essence, Applicant is arguing for an alternative interpretation of the record evidence. 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). In short, we find no error in the Judge's conclusion that Applicant failed to meet his burden to mitigate the security concerns arising from the alleged debts.

Conclusion

Applicant failed to establish that the Judge committed any harmful error or that he should be granted an exception under Directive, Encl. 2, App. C. 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 the national security."

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

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

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