



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

Date: January 29, 2024

In the matter of:)	
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)	
-----)	ISCR Case No. 20-01659
)	
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 February 3, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and 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). On November 9, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Braden M. Murphy denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge scheduled and held an initial session in August 2023 but continued the hearing in part because Applicant raised a jurisdictional question with regard to sponsorship (*i.e.*, whether the position for which he was hired required a security clearance). After receiving confirmation that Applicant was sponsored for a security clearance by his employer, the Judge rescheduled and

completed the hearing. Under Guideline E, the SOR alleged 17 security concerns: a series of 13 arrests and criminal offenses between 1994 and 2009; two falsifications of his security clearance application (SCA) by failing to disclose delinquent debts and Driving Under the Influence (DUI) charges; and two falsifications during his security clearance interview by denying delinquent debts and denying criminal offenses when confronted with the charges. Under Guideline F, the SOR alleged seven debts in collections. The Judge found in Applicant's favor on the 13 Guideline E criminal conduct allegations and against Applicant on the four Guideline E falsifications and the Guideline F allegations.

Applicant is in his late-40s and divorced with three children. Decision at 2. In summarizing his decision, the Judge held that the criminal offenses alleged under Guideline E were dated and mitigated by time, but that the falsification allegations for failing to disclose two DUI offenses and delinquent debts on his SCA and for failing to acknowledge any debts or criminal offenses during his background interview were not mitigated. Additionally, although the Judge concluded that the criminal offenses were mitigated by the passage of time, he noted that the "overall mitigation effect . . . is undercut by his recent, repeated false statements and refusals to accept responsibility for his actions and his debts, especially during the security clearance process." *Id.* at 13. Under Guideline F, the Judge held that debts totaling about \$127,000 were detailed in Applicant's 2019 and 2020 credit reports and that Applicant's assertion that they were not his responsibility was not supported by evidence. *Id.* at 11.

On appeal, Applicant again raises a quasi-jurisdictional issue, arguing that adjudication of his July 2019 SCA should have terminated when he was laid off in May 2021 and that a new application and adjudication should have been initiated upon his November 2021 re-hire. Additionally, Applicant argues that he misinterpreted the questions in his SCA, that he should have been offered an opportunity to resubmit a corrected SCA, and that the Judge failed to consider credit reports and other financial evidence he submitted.

First, the record fully supports DOHA's jurisdiction. Our review of the record indicates that the SOR was issued and answered prior to Applicant being laid off in May 2021 and that no further steps were taken until June 2022, well after Applicant was re-hired and again sponsored for a clearance. Prior to hearing, Department Counsel confirmed sponsorship, and she did so again after Applicant—in the initial session—questioned whether his position required a clearance. The Directive provides that—subject to certain exceptions—adjudication "shall cease upon termination of the applicant's need for access to classified information." Directive ¶ 4.4. Here, once Applicant's employer confirmed Applicant's current need for access to classified information, the Judge properly found that subject matter jurisdiction was established. Applicant provides no authority for his position that the entire application and adjudication process should have begun anew after his brief hiatus from employment, and we are aware of none.

Next, Applicant asserts that he misunderstood the SCA questions and requests that he be given an opportunity to submit a corrected SCA. Applicant did not report any criminal record on his 2019 SCA and did not disclose any delinquent debts. Decision at 7; GE 1. In testimony, he denied any falsification and said that he answered the SCA to the best of his ability. He has had no arrests or offenses since 2009. Decision at 7; Tr. 20, 50-54, 123, GE 1. Applicant explained at

the hearing that he did not deliberately falsify his answer on his SCA by failing to disclose his alcohol-related arrests because he was not convicted. He said he was not aware until recently that the question asked, “**Have you ever** been charged with an offense involving alcohol or drugs.” Decision at 6. The Judge concluded:

Applicant had a duty to disclose both [DUIs] on his 2019 SCA under the “Have you ever been charged with an offense related to alcohol or drugs” question and did not do so. His explanation that he did not believe he had to report offenses that did not result in a conviction is not credible. . . . Applicant also failed to disclose any delinquent debts on his SCA, in answer to questions calling for disclosure of that information. . . . Perhaps most troubling, the record supports a conclusion that Applicant repeatedly failed to acknowledge either any criminal offenses or arrests during his background interview (even offenses that need not have been disclosed on the SCA). He repeatedly cited his brother as the one responsible for many of the offenses, when the record said otherwise. He also repeatedly failed to acknowledge any delinquent debts until he was confronted about them by the interviewer. [*Id.* at 12–13.]

The Administrative Judge, as trier of fact, is entitled to weigh the evidence and make credibility determinations about witnesses (including applicants). Because of the Administrative Judge's ability to personally observe the demeanor of witnesses, the Judge's credibility determinations are entitled to deference on appeal. *See* Directive ¶ E3.1.32.1. Although credibility determinations are not immune from review, an appealing party has a heavy burden to meet before the Board will disturb or overturn a Judge's credibility determination. *See, e.g.,* ISCR Case No. 96-0608 at 3 (App. Bd. Aug. 28, 1997). Here, the Judge's adverse credibility determination and findings against Applicant on the falsification allegations are adequately supported by record evidence.

Finally, the record provides us no reason to conclude that the Judge did not consider all of the record evidence or Applicant's testimony at the hearing. Applicant submitted seven exhibits with his answer to the SOR and at the hearing, and all of the exhibits were admitted into the record. He was provided an opportunity to supplement his document submission after the hearing, but he did not. 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).

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
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board

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