

allegations of interactions with law enforcement. The favorable findings and related conduct are not at issue on appeal and will not be further discussed.

On appeal, Applicant contends that the Judge erred in his credibility assessment, rendering his decision arbitrary, capricious, and contrary to law. Consistent with the following, we affirm.

The Judge's Findings: The Judge's findings relevant to the appeal are summarized below.

Applicant is in his mid-40s. He served in the National Guard in the mid-1990s and on active duty in the U.S. military from 1995 to 2001, when he was honorably discharged. Married in 1995, he divorced in 2005 and lived with a cohabitant from about 2012 to 2019. He has seven children.

While stationed overseas in 2000, Applicant was arrested by military police on charges of being drunk and disorderly and failing to obey an order. In his security interview, Applicant stated that he received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for the incident. In his SOR Answer and at hearing, Applicant stated that he was never formally disciplined for the incident. In 2005, Applicant was stopped by the police for speeding, was belligerent and uncooperative, refused a blood or breath test, and was arrested for driving while intoxicated (DWI). He completed a diversion program, and the charge was dismissed in 2006. In 2007, Applicant was again arrested for DWI, but the charge was ultimately dismissed. The 2007 DWI was not alleged in the SOR but "may be used to assess Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis." Decision at 3.

In May 2011, Applicant submitted a Questionnaire for Public Trust Positions (SF-85P). In response to the question that asked, "In the last 7 years, have you been arrested for, charged with, or convicted of any offenses(s)?" Applicant answered "No" and failed to disclose that he was arrested both in 2005 and 2007 for DWI. At hearing, Applicant denied intentionally providing false information, stating both that he misunderstood the question to be asking about convictions and that he believed his DWI arrests to be more than seven years old.

In 2012, Applicant refused to leave a bar when requested, first by security and later by police. Applicant was arrested and charged with criminal trespassing and public intoxication, but the charges were later dismissed as the bar owner did not want to pursue criminal charges.

In 2014, Applicant was living with a cohabitant (Ms. A) when the police responded to a domestic violence call. Ms. A reported that Applicant choked her during an argument, and the police noted redness on her neck, bruising on her arm, and a welt on her knee. Applicant was arrested and charged with assault of a family/house member impeding breath/circulation. An emergency protective order (EPO) was issued forbidding Applicant from communicating with Ms. A, and from returning to the property. When an investigator met with Applicant, Applicant admitted that he placed his hands on Ms. A, but maintained that it was in self-defense. He admitted speaking with Ms. A on the phone and returning to the residence to retrieve belongings. Applicant was charged with violating the EPO, but Ms. A withdrew cooperation in the case and all charges were ultimately dismissed.

At hearing, Applicant denied choking or striking Ms. A. Instead, he stated that they had been drinking, that they began arguing, and that he grabbed Ms. A to restrain her after she attacked him. He also stated that he returned to the property because he and his daughter had nowhere else to go and that Ms. A was not present.

Applicant has not been arrested or charged with any offense since the 2014 incident. In September 2022, Applicant submitted a SCA and answered “No” to all questions concerning a police record, including the question that asked:

Other than those offenses already listed, have you **EVER** had the following happen to you?

. . .

Have you **ever** been charged with an offense involving alcohol or drugs?

In his subsequent background interview in November 2022, Applicant again provided negative answers to all the criminal questions. After the investigator reminded him that they were “ever” questions, Applicant reported most of the matters discussed above, but he did not disclose the 2007 DWI arrest.

At hearing, Applicant denied intentionally providing false information on his 2022 SCA. He maintained that he misunderstood the question to be asking about convictions and that he believed he only had to report incidents within the past seven years. Additionally, Applicant stated that he discussed the 2007 DWI with the investigator, but that the investigation did not include it in the report. Regarding this testimony, the Judge stated: “I did not find Applicant credible. I find the police reports associated with his arrests to be more reliable than his testimony. I also find that he intentionally provided false information on the 2011 SF 85P and the 2022 [SCA].” *Id.* at 5.

Applicant has a history of financial problems, which he attributed to a job change in which his salary was drastically reduced and to overextending himself on car loans for his children. The SOR alleges a Chapter 13 bankruptcy case and 15 delinquent debts. The debts include a student loan, an auto loan, child support arrearages, and 12 miscellaneous debts. There is some evidence that the student loan debt has been forgiven and that the child support arrearage has been paid. The 12 miscellaneous debts are all included in the Chapter 13 bankruptcy.

The Judge’s Analysis: The Judge’s analysis is summarized and quoted below.

Guideline E, Personal Conduct

Applicant is alleged to have falsified his 2022 SCA and his 2011 SF 85P by failing to disclose his 2005 DWI arrest. Applicant maintained that he understood the questions on both forms to be asking if he had been convicted and that he thought he only had to report incidents within the last seven years. After assessing Applicant’s credibility and considering all the evidence,

including the straightforward nature of the questions on both forms, the Judge concluded that Applicant intentionally provided false information on both the 2011 SF 85P and the 2022 SCA when he failed to report that he was charged with DWI in 2005. *Id.* at 9, 10.

Regarding the Guideline E allegations concerning Applicant's criminal conduct in 2000 (overseas incident), 2012 (criminal trespass), January 2014 (assault), and February 2014 violation of the EPO, the Judge concluded as follows:

Applicant was last charged with a criminal offense in February 2014, almost nine years ago. That conduct would be mitigated if I believed Applicant. I do not. His conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns. Additionally, having determined that Applicant intentionally provided false information in an attempt to mislead the government, I have also determined that his testimony about those statements was also false. False statements at a security clearance hearing show a lack of rehabilitation, and it would be inconsistent to find his conduct mitigated. [Decision at 11 (citation omitted).]

Guideline F, Financial Considerations

The Chapter 13 bankruptcy case does not generate any security concerns beyond the delinquent debts that are included in it and alleged in the SOR. The allegation concerning the bankruptcy is concluded for Applicant, as are the allegations regarding the student loan and the child support arrearages. Applicant began to resolve the other debts through a bankruptcy proceeding only after he completed his SCA and was interviewed for his background investigation. Additionally, the Judge noted, "Applicant's Chapter 13 bankruptcy case still has years to run, and I cannot take him at his word that he will continue with the plan until completion." *Id.* at 13. There is insufficient evidence that Applicant's financial problems will be resolved within a reasonable period, that he acted responsibly under the circumstances, or that he made a good-faith effort to pay his debts.

Discussion

On appeal, Applicant asserts that the "key" to the Judge's decision was his assessment that Applicant was not credible and argues that the Judge applied this "theme that the Applicant was not credible" in an arbitrary and capricious manner. Appeal Brief at 2. We agree that the Judge's unfavorable credibility assessment of Applicant was central to his resolution of this case, but we find no reason to conclude that the Judge's assessment was unsupported by the record or applied in an erroneous fashion.

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts

found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

The Directive requires the Appeal Board to give deference to a judge's credibility determinations. Directive ¶ E3.1.32.1. Although that deference has its limits, an appealing party has a heavy burden of demonstrating that a judge's credibility determination is arbitrary, capricious, or otherwise unsustainable. *See, e.g.*, ISCR Case No. 03-05072 at 5 (App. Bd. Jul. 14, 2005). Upon his review of the evidence in this case—to include Applicant's testimony at the hearing—the Judge made several discrete conclusions regarding credibility, to include: that the police reports on the instances of alleged criminal conduct were more reliable than Applicant's testimony regarding those same events; that Applicant's version of those events was not believable; that Applicant intentionally provided false information on his 2011 SF 85P and his 2022 SCA by failing to disclose his 2005 DWI arrest; and that Applicant's testimony at the hearing about the same was also false. Those credibility determinations are well within the Judge's authority, and nothing in Applicant's brief or in our review of the record gives us reason to disturb the Judge's adverse assessment. Applicant may disagree with the Judge's negative assessment of his credibility, but that disagreement is not sufficient to meet his heavy burden of persuasion. *Id.*

The remainder of Applicant's brief is fundamentally an argument that the Judge failed to consider evidence in mitigation or misweighed the evidence. The Judge's decision, however, reflects a thorough consideration of all evidence presented, and it notably concludes with favorable findings on several allegations based on evidence presented by Applicant at the hearing. None of Applicant's arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision.

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. 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*, 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: 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