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 25, 2024

In the matter of:	)	
	)	
-----	)	ISCR Case No. 22-01548
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 12, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline J (Criminal Conduct), 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 June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On March 21, 2024, after a hearing, Defense Office of Hearings and Appeals Administrative Judge Carol G. Ricciardello denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline J 13 allegations of criminal conduct including five misdemeanor traffic violations; two charges and a conviction for assault; larceny; entering military property; probation violations; and reentering military property after being banned. Under Guideline E, the criminal allegations above were cross alleged plus 16 traffic violations, and Applicant was alleged to have been debarred from a military base and terminated from Government employment for failing to disclose a job termination on Government documents. Under Guideline F, Applicant is alleged to have seven financial accounts in collections or charged-

off, totaling about $28,700. Except for two financial allegations and one withdrawn criminal allegation, the Judge found against Applicant on all of the remaining SOR allegations.

On appeal, Applicant contends the Judge failed to consider all relevant evidence, misstated the facts, and was biased, degrading, and unfair, rendering the decision as arbitrary, capricious, and contrary to law. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

The Judge made the following findings of fact: Applicant is in his early 40s. He received a high school equivalency diploma in 2001. He is unmarried and has two teenaged children. He has worked for a federal contractor since 2021. Applicant has a long history of criminal conduct beginning in 2004 and continuing to May 2022. In 2004, he failed to return a key he was entrusted with when he worked at a fast-food restaurant and broke in at night and stole $1,200. In 2005, he pleaded guilty to assaulting the mother of one of his children, and he has been charged and found guilty twice for failing to appear in court as ordered. He has been found guilty of probation violations three times, including once for intentionally failing to attend an anger management class, for which he was ordered to serve 50 days in jail.

Applicant has also been charged with misdemeanor offenses involving the operation of his vehicle without insurance, reckless driving-wanton disregard (speeding), fictious/altered title/registration card, and driving with a revoked license. He has shown an obvious disregard for complying with the law. His conduct has occurred over the past 18 years with his latest offense occurring in 2022. He failed to comply with court orders, probation terms, and traffic laws.

Applicant's falsification on government documents and sheer number of charges under criminal and motor vehicle laws since 2004 raise questions about his willingness to comply with rules and regulations. Also, he has failed to address certain debts, including documented efforts to contact creditors. He has not provided evidence that he acted responsibly or received financial counseling, and his debts are recent and ongoing.

Based on extensive criminal conduct, the Judge was unable to conclude future misconduct was unlikely to recur. There is insufficient evidence of rehabilitation to mitigate his history of criminal conduct.

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government produces evidence raising security concerns, an applicant bears the burden of persuasion concerning mitigation. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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." Directive, Encl 2, App. A ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the Judge's 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. *E.g.*, ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

On appeal, Applicant alleges the following errors in the decision: the Judge confused a probation violation for a parole violation in describing the 2005 offense; she did not mention that he discussed his 2005 assault offense with a Government investigator; she failed to consider that his 2009 fictitious tags offense was dismissed after he produced a new title and registration; she implied that his 2019 assault charge and being stabbed by the mother of his child were on the same day; she incorrectly stated that his 2019 traffic violation was connected to an auto accident; she implied that his termination from a Government position was not reported in his most current security clearance application (SCA); and she failed to mention the debts he resolved as of 2024. Additionally, Applicant alleges that he was treated unfairly by the Judge based on comments made during the hearing.

We agree that the Judge made a minor factual error in labeling a probation violation as a parole violation, but we conclude that the error is harmless as it does not likely affect the outcome of the case. ISCR Case No. 19-01431 at 4 (App. Bd. Mar. 31, 2020). Applicant's other contentions as to how the Judge may have viewed record evidence and any implications made in the decision are without merit. The Judge is not required to discuss every aspect of the evidence in her decision, and, except for the minor error mentioned above, her findings are substantially supported by the evidence. We have long held that a disagreement with 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. *E.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). From our review of the record, the Judge's material findings or conclusions are supported by substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 18-02581 at 3 (Jan. 14, 2020). With regard to additional or clarifying evidence presented on appeal, the Appeal Board is prohibited from considering new evidence on appeal and does not review cases *de novo*. Directive ¶ E3.1.29.

Finally, Applicant raises the possibility that the Judge was biased, unprofessional, and insensitive because of remarks she made during the hearing. We find the Applicant misstates the evidence and incorrectly quotes the record. For example, he claims the Judge stated "I can't believe you were hired" in discussing his employment in a store loss-prevention position. Appeal Brief (AB) at 2. The record instead establishes that the Judge questioned Applicant to determine whether he had disclosed his earlier larceny from an employer prior to being hired in a loss-prevention position. Tr. 74. Similarly, Applicant claims that the Judge asked during a discussion of an incident in which Applicant was stabbed by his girlfriend, "why weren't you charged?" Our review of the transcript confirms that the Judge instead asked a question to clarify whether the stabbing occurred in the same incident as an alleged assault by Applicant. Tr. at 20. Finally, Applicant states he was offended when Department Counsel "compar[ed] my case to a case involving child pornography or any type of sexual misconduct …." AB at 2. In fact, Department Counsel in his closing statement was citing to Appeal Board cases (including a child pornography case) in which applicants did not

take responsibility for their actions and/or criminal conduct was dated. Tr. at 78. The hearing transcript does not support Applicant's assertions of bias or unprofessional conduct.

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which 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: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

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