

terminated for cause from another employer in 2022. Applicant admitted all allegations other than the 2022 termination for cause. The Judge found for Applicant on two relatively minor debts and against him on all other allegations.

On appeal, Applicant alleges that the Administrative Judge improperly applied factual findings that were unsupported in the record and that the Judge “did not consider facts that were favorable and highly dispositive on the [Applicant’s] current reliability, trustworthiness, and good judgment.” Appeal Brief (AB) at 11. Our review of the Judge’s decision confirms that he considered all relevant issues and properly applied the mitigating conditions. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is in his mid-forties and has one minor child. He has completed some college course work but has not earned a degree. He has been employed since 2007 with two gaps in employment: he was unemployed from about June 2015 to August 2017 because of an injury and was unemployed from about February 2020 until September 2022 while between jobs or because of COVID 19.

The SOR alleges six delinquent debts totaling approximately \$47,380, including three charged-off vehicle loans totaling \$43,475. Applicant attributes his financial problems to unemployment and underemployment, and his financial circumstances have significantly improved in the past several years. He has saved more than \$160,000, paid smaller or more recent debts, and rebuilt his credit score. He has stated his ability and willingness to resolve all the alleged debts.

Regarding the auto loan charged off for \$22,770 (SOR ¶ 1.c), credit reports reflect that the loan account was opened in September 2018, the last payment was in May 2019, and the account was charged off with a past-due balance of \$22,770. Applicant testified that he realized after signing the loan agreement that the interest rate was about 25 percent; that he contacted the creditor to renegotiate terms; and that he put the vehicle in storage when the creditor refused. Applicant did not recall if he ever made a payment on the loan. Applicant also stated that this loan was part of a class action lawsuit for predatory lending, for which he received about \$900. He understood if he started making payments or returned the vehicle it could harm his credit and restart a seven-year statute of limitations and so was unsure of the right course of action. After the hearing, Applicant settled and paid the debt for \$10,000.

Three other debts are for a credit card charged off for \$3,245 (SOR ¶ 1.d) and two auto loans charged off for \$6,879 and \$13,826 (SOR ¶¶ 1.e-1.f). For all three, Applicant stated that he negotiated settlement agreements in 2022 because his employer’s facility security officer (FSO) told him it would resolve security concerns about the debts, but that he made no payments under the settlement agreements. After the hearing, Applicant submitted a written statement in which he claimed these debts are no longer on his credit report and are resolved but submitted no documents to support his claims.

Under Guideline E, the SOR includes three allegations. The first is that Applicant was criminally charged in about 19 incidents from 1999 to 2019 (SOR ¶ 2.a). Upon his review of the evidence, the Judge clarified as follows:

Records show 20 charges or citations arising from 15 incidents from April 2002 to April 2019. Applicant has been charged or cited with nine vehicular or traffic offenses including DUI of alcohol or possession of illegal drugs (August 2009). He pled guilty to driving on a suspended driver's license (2003), speeding (2007, 2011, and May 2019), an improper driver's license (2011) and his driver's license was suspended for failure to pay a fine and court costs (June 2019). He was convicted of domestic violence twice in 2003. (GE 5 at 6-7), In January 2015 he was convicted of petty larceny, ordered to pay a fine and assessments of \$530 and issued a no contact order. He said his attorney alleged he stole her cell phone which he denied. He was charged with possession of marijuana (2002), acquisition of by theft, unlawful sale, purchase or receipt of credit cards (2002), disorderly conduct and disobeying a police officer (2011), disorderly conduct (2011) and possession of a controlled substance, and malicious mischief (July 2016). [Decision at 5 (internal cites omitted).]

Applicant admitted the allegation, explaining that he grew up in a small town in a well-to-do family with a fast car and a motorcycle and that most charges were traffic violations and ultimately dismissed. His most recent involvement with law enforcement occurred when he was pulled over for speeding in about June 2019 while driving to a job interview. He testified that he has changed his life and has not had any involvement with law enforcement since 2019.

The second allegation under Guideline E is that Applicant falsely claimed to be married while onboarding with Company A in about October 2019, in an attempt to fraudulently obtain spousal insurance benefits for a person not his wife (SOR ¶ 2.b). Applicant admitted the allegation, with the explanation that his girlfriend helped him fill out his benefits enrollment paperwork and listed herself on the forms without his knowledge. He denied intentionally misleading his employer about his marital status. Contrary to Applicant's assertions, the Judge found as follows:

I do not find Applicant's claims that he did not intentionally or knowingly claim to be married to his then girlfriend credible. His testimony and demeanor during the hearing were unconvincing, inconsistent with someone who was reliably telling the truth, and contradicted in significant part by documentary evidence. I find that he falsely claimed to be married to fraudulently obtain spousal insurance benefits for a person not his wife. [*Id.* at 6 (internal cites omitted).]

The final allegation under Guideline E (SOR ¶ 2.c) is that Applicant was terminated for cause by Company B in about June 2022 for conduct and behavior that included failing to

comply with required document submissions and inappropriate text messages to other employees and that, upon termination, Applicant refused to return his DOD issued Common Access Card (CAC). Applicant denied this allegation and the related behavior and stated that he walked off the job. Applicant testified that he did not return his CAC immediately because he did not trust company personnel and that he returned it several days later to the site where it was issued. The Government's evidence supports the allegation as drafted.

The Judge's Analysis

Applicant's admissions and record evidence establish three disqualifying conditions under Guideline F: an inability to satisfy debts, an unwillingness to satisfy debts regardless of ability to do so, and a history of not meeting financial obligations. AG ¶¶ 19(a)–(c). None of the mitigating conditions are established for the four debts alleged in SOR ¶¶ 1.c-1.f. While Applicant's unemployment and underemployment were conditions beyond his control, he did not act responsibly under the circumstances. Although he had the financial resources to pay the debts for the past few years, he has largely chosen to ignore them.

Although Applicant reached an agreement to settle the debt alleged in SOR ¶ 1.c (\$22,770) and authorized payment of the \$10,000 settlement amount in December 2023, his actions do not warrant full mitigative credit. He placed the vehicle subject of this delinquent loan in storage after his request to renegotiate loan terms was denied, made no payments on the loan for at least four and a half years, and then entered an agreement to settle and authorized payment only after his hearing. The timing of an applicant's actions, including repayment of delinquent debts, impacts upon the degree to which the mitigating factors apply.

The debts alleged in SOR ¶¶ 1.d-1.f. (totaling \$23,130) are long-standing and ongoing. Applicant has made no payment on any of these debts since at least September 2018. Although he negotiated settlement agreements for each debt in 2022, there is insufficient evidence to find he adhered to a good-faith effort to resolve them because he made no payments under those agreements and apparently never intended to. That these debts have dropped off recent credit reports is not meaningful evidence of debt resolution. The security concerns established by Applicant's ongoing delinquent debts are not mitigated. [Id. at 9–10 (internal cites omitted).]

Turning to the Guideline E allegations, disqualifying conditions are established by Applicant's criminal history, his false claim to fraudulently secure employment-related insurance benefits, his termination for cause because of inappropriate conduct, and his refusal to return his CAC card upon termination. None of the mitigating conditions are fully established. Applicant has demonstrated "a pattern of questionable judgment and unwillingness to comply with rules and regulations." *Id.* at 12. Although Applicant's last criminal conduct occurred more than five years ago, his troubling personal conduct in 2019 and 2022 and his failure to take responsibility for that conduct makes it difficult to conclude that such behavior is unlikely to recur. Applicant's

explanation for why he left Company A was “uncorroborated and not credible” and “his continued false denial of this conduct shows he is still vulnerable to exploitation, manipulation, and duress.” *Id.* His termination for cause by Company B would not, standing alone, necessarily be of security concern, but the disruptive and inappropriate behavior that resulted in his termination and his conduct post-termination are not mitigated.

Discussion

On appeal, Applicant challenges the Judge’s factual findings as well as his conclusions. When an administrative judge’s factual findings are challenged, the Board must determine whether the findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record and whether the judge’s findings reflect a reasonable interpretation of the record evidence as a whole. Directive, E3.1.32.1; ISCR Case No. 02-12199 at 2–3 (App Bd. Aug. 8, 2005). 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. ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

Applicant alleges several factual errors in the decision. For example, with regard to the auto loan at issue in SOR ¶ 1.c, Applicant asserts as a factual error that the Judge “failed to consider the lengthy and drawn-out class action lawsuit against the predatory lender and the responsible actions taken by [Applicant] in keeping the vehicle in a safe location . . . until the class action lawsuit was complete, and a settlement offer was given.” Appeal Brief (AB) at 12. Through his Counsel, Applicant further asserts that his “withholding of payment was not due to the lack of taking on the debt as a responsibility; rather he was waiting until the “dust settled” on the predatory lending lawsuit.” *Id.*

Like Counsel’s other assertions of factual error, this challenge largely conflates “facts” with “conclusions.” Regardless of which standard is applied, however, this allegation of error is wholly without merit. The record establishes that the lawsuit against the predatory lender had nothing to do with Applicant’s failure to pay on the auto loan. Applicant himself testified at hearing: “I was unaware there was even a class action lawsuit. To be honest, I randomly got a check in the mail for like [\$800.00 or \$900.00] or something notifying me that I was part of a class action lawsuit, and that was my portion.” Tr. at 70. Contrary to Applicant’s argument, the Judge’s findings and conclusions regarding this debt are amply supported by the record.

Regarding the other two auto loans (SOR ¶¶ 1.e and 1.f), Applicant asserts that they were “responsibly addressed” in that he entered into settlement agreements for both in May 2022 on advice of his FSO and, although he made no payments under the agreements, the debts have apparently “fall[en] off his credit report due to age.” AB at 6–7. Here again, the Judge’s findings

regarding these debts are amply supported by the record. His conclusion “[t]hat these debts have dropped off recent credit reports is not meaningful evidence of debt resolution” is firmly rooted in the Appeal Board precedent to which he cites. Decision at 10.

Turning to the Guideline E allegations, Applicant identifies the Judge’s adverse credibility determination as “inseparable” from his findings and challenges that unfavorable determination: “Because the Judge found [Applicant] to be not credible, he concluded that the personal concerns listed were indeed factual, and consequently, the Judge erred in determining that SOR 2.a–2.c was found against [Applicant].” AB at 13. The Directive requires the Appeal Board to give deference to a judge’s credibility determination. Directive ¶ E3.1.32.1. While that deference has its limits, there is nothing in this record or Applicant’s brief that gives us any reason to question the Judge’s adverse determination. The Judge was also well within his authority to consider that determination in assessing whether Applicant successfully rehabilitated himself, in evaluating whether he mitigated the Guideline E security concerns, and in conducting his Whole Person assessment. When an applicant is unwilling or unable to accept responsibility for his own actions, such a failure is evidence that detracts from a finding of reform and rehabilitation. ISCR Case No. 21-00321 at 3 (App. Bd. Sep. 8, 2022).

The remainder of Applicant’s brief advocates for an alternative weighing of the evidence. 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.” ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, there is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise, and a bare assertion that the Judge did not consider evidence is not sufficient to rebut that presumption. *E.g.*, ISCR Case No. 19-03344 at 3 (App. Bd. Dec. 21, 2020).

Applicant’s Counsel has failed to establish any harmful error below. The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. 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 in ISCR Case No. 22-00448 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