



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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Date: February 13, 2025

In the matter of:)	
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)	
-----)	ISCR Case No. 24-00389
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 19, 2024, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). The Government subsequently amended the SOR to cross-allege the criminal conduct allegations under Guideline E (Personal Conduct). On November 26, 2024, Defense Office of Hearings and Appeals Administrative Judge Edward W. Loughran denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged a single delinquent debt of approximately \$80,300. Under Guidelines J and E, the amended SOR alleged a 2021 arrest for aggravated assault and a

2022 arrest for disorderly conduct and assault. The Judge found adversely to Applicant on all allegations. On appeal, Applicant contends that the Judge made factual errors, was biased against him, and misapplied the Whole-Person Concept. Consistent with the following, we affirm.

The Judge's Findings

Applicant is in his mid-fifties and has held a security clearance for more than 20 years, with some breaks. Applicant's first marriage ended in divorce in 2019, and he married his current wife in 2020. He has four adult children.

Finances

In 2006, Applicant financed the purchase of his home with a 30-year mortgage and a second mortgage that he described as a home equity line of credit (HELOC). The HELOC, now in issue at SOR ¶ 1.a, was in the original amount of \$59,600. The two credit reports in evidence show the last activity date as 2018 or 2022 and the balance as either about \$76,300 or about \$80,300. Apart from this delinquent debt – his finances are in order.

Criminal Conduct

On several occasions between 2020 and 2022, the police responded to calls at Applicant's home. The Judge recited the facts from the police reports in considerable detail, noting that matters not alleged in the SOR would not be used for disqualification purposes, but could be used to assess Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis. The summary below contains those facts from the Judge's decision most relevant to the appeal.

Police responded to Applicant's home in May 2020. Applicant reported that he and his wife had an argument that turned physical, during which his wife pulled out a pistol and fired it without hitting him. His wife was arrested for aggravated assault with a deadly weapon, discharging a firearm in the city, and disorderly conduct. She was convicted and placed on probation.

The next incident, which took place later in 2020, is alleged at SOR ¶ 2.b. In December 2020, Applicant's wife called the police complaining that he was assaulting her. Applicant came on the line and stated that his wife was on probation for domestic violence and was assaulting him. The police response and investigation revealed a situation of mutual violence. Applicant's wife reported that Applicant had choked her and wanted to kill her. Applicant admitted that he choked his wife but claimed that it was in self-defense after his wife attacked him, biting his arm and scratching his neck. The police reviewed footage from a video camera in the home that was partially blocked but showed some of the altercation, including instances of Applicant grabbing his wife by the neck. Although the police believed that there might be probable cause to arrest both Applicant and his wife, they ultimately decided to arrest only Applicant. He was charged with aggravated assault and domestic violence-strangulation impeding airway. The following month, both Applicant and his wife recanted their statements to the police, and the district attorney declined to prosecute the charges against Applicant.

Police responded to the couple's home again in late January 2021 and in April 2022, the first time in response to a call from Applicant and, the second time, in response to calls from both husband and wife. In the first instance, Applicant reported that his wife was destroying his property, that she struck him on the head, and that he grabbed her by the hair in self-defense and threw her out of the room. In the second instance, the wife's mother reported that her daughter had an alcohol problem, and the police noted that she was visibly intoxicated. The police made no arrests in either situation.

In September 2022, police again received a phone call from Applicant's address, and the resulting incident is alleged at SOR ¶ 1.a. The call came from a female, who was crying and said she was tired of being beaten. As two police officers approached the house, Applicant was outside and yelled that the police should talk to his wife, that she was "nuts," and that he was moving out. Decision at 5. The police report provides a detailed, lengthy description of the interaction between Applicant and the two officers. In summary, the report describes a situation in which Applicant, who was much larger than either officer, first walked away, refusing to respond to the officers, then swung at the officers when they tried to grab his arm, escalated the situation in response to the officers' attempts to de-escalate, refused to put his hands behind his back, physically resisted being cuffed, had to be taken to the ground, and bit an officer.

When the police interviewed Applicant's wife, she had scrapes on the right side of her face and arm. She described an argument that became physical, during which Applicant struck her on the face with an open hand and threw her against a tree in the backyard. Applicant told the police that his wife had an alcohol problem and was on probation for a driving under the influence charge. He stated that she slipped and fell the previous evening but that he never touched her. When asked if he bit the police officer, Applicant responded, "I will not deny it. I do not recall it. Biting is part of my training." Decision at 7 (quoting Government Exhibit 4). A photo of the officer showed a reddened circular area, consistent with a bite that did not break the skin. There was body camera footage of the incident.

Applicant was arrested for aggravated assault—peace officer, assault—minor injury, and disorderly conduct. In September 2023, he pleaded guilty to a felony pursuant to a plea bargain and was sentenced to probation for 18 months. If Applicant successfully completes probation, the felony conviction will be reduced to a misdemeanor.

At hearing, Applicant admitted that he was convicted for the latter incident but denied that he did anything wrong in either alleged incident. He blamed the incidents on his mentally unstable wife with a drinking problem, attributed her injuries during the December 2020 incident to her fondness for rough sex, and discounted the video footage from that incident. Regarding the September 2021 incident, Applicant blamed a corrupt and dishonest police force and denied biting the officer. Applicant stated that he accepted the plea bargain for the September 2022 incident on the advice of his attorney. He did not want to risk becoming a convicted felon and, under the terms of the plea bargain, the felony conviction will be reduced to a misdemeanor conviction upon successful completion of probation. Applicant intends to sue the police department and the officer after he completes probation. Regarding Applicant's testimony, the Judge stated: "I did not find Applicant credible. After considering all the evidence, I find by substantial evidence that he assaulted his wife in December 2020, and he resisted arrest and assaulted a police officer in 2022." Decision at 8.

Applicant is also on probation for an incident in March 2023 in which he violated a no-contact order to remain away from his wife. He did not actually see his wife on the occasion, but he met his daughter at his wife's home, which a judge considered a violation of the court order. Applicant was fined and placed on probation for about three years for the offense.

The Judge's Analysis

Guidelines J and E

Applicant's arrests for criminal offenses in December 2020 and September 2022 and the underlying conduct establish disqualifying conditions under Guidelines J and E. In concluding that none of the mitigating conditions apply, the Judge stated:

Applicant blamed the incidents on his mentally unstable wife and a corrupt and dishonest police force. I do not find his wife completely blameless in the matter. She was convicted on one occasion and participated at least to a degree in the December 2020 incident. . . . I find the police officer's description of the tape from the 2020 incident to be far more reliable than Applicant's version of the event. I further find that his testimony about the incident was intentionally false.

As to the September 2022 arrest, that conduct was recorded on the officers' body cameras. Additionally, Applicant pleaded guilty pursuant to a plea bargain to a felony, which will be reduced to a misdemeanor if he successfully completes probation. His probation remains in effect until 2025. I am convinced that he resisted arrest and assaulted a police officer.

Applicant is a licensed pilot with stringent rules. He stated that he is just as meticulous in how he handles classified information. However, he failed to accept responsibility for his criminal conduct and provided false testimony about it at his hearing. The Appeal Board has held that "[a]n applicant's refusal to acknowledge his misconduct or accept responsibility for it seriously undercuts a finding that the applicant has mitigated his misconduct."

Since I cannot trust Applicant's testimony, I cannot find that criminal conduct is unlikely to recur. . . . Criminal conduct security concerns are not mitigated.

The discussion under criminal conduct applies equally [to Guideline E]. I did not find Applicant credible. He remains on probation for a

felony conviction and for violating a no-contact order in 2023. I am unable to find that problematic conduct is unlikely to recur. His conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome concerns about Applicant's poor judgment and problematic conduct. [*Id.* at 10–12 (internal citations omitted).]

Guideline F

The foreclosure on Applicant's home in about 2018 resolved the first mortgage but left a second loan unpaid. Although Applicant may have been unable to pay the loan at some point, he has since refused to pay it under any condition. Two disqualifying conditions are applicable: AG ¶ 19(a), *inability to satisfy debts*; and AG ¶ 19(b), *unwillingness to satisfy debts regardless of the ability to do so*.

Applicant stated that the house went into foreclosure because of his separation and divorce from his first wife. He had to move for his job, and she remained in the house without paying anything toward the loans. Applicant stated his beliefs that: he is not responsible for the loan because he let the primary and secondary lenders know that the house was going into foreclosure; the creditor should have participated in the foreclosure; the creditor improperly changed the loan from a secured loan to an unsecured loan; and collections on the loan are barred by his state's statute of limitations. As to his assertions that he does not owe the lender, Applicant provided no supporting documentation. Regarding his argument that collection is barred, the Appeal Board has held that “[l]ittle mitigation is provided in security clearance cases when an applicant stands on a legal defense such as the statute of limitations.” *Id.* at 14 (citation omitted). The Judge concluded:

This is not a clear-cut case, even though I am unable to find any mitigating conditions applicable. There are no other financial matters of concern, and Applicant's separation and divorce played a part. Under other circumstances I might have found this defaulted loan mitigated. However, Applicant's failure to accept any responsibility for the matter causes me concern. He does not feel like he benefitted “in any way” from the loan because he “put that money back into the house to try and fix it up and make it better.” That is an unreasonable position. Additionally, I am required to consider the whole person and not address individual allegations in a piecemeal manner. His failure to accept responsibility for his financial problems is similar to his failure to accept responsibility for his criminal conduct.

Applicant does not have a track record that would indicate that this defaulted loan will be resolved within a reasonable period. He did not act responsibly under the circumstances, and he did not make a good-faith effort to pay his debt. The unpaid debt continues to cast doubt on his current judgment, reliability, and trustworthiness. Financial considerations security concerns are not mitigated. [*Id.*]

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E, F, and J in my whole-person analysis. As a pilot, Applicant is trusted to navigate the nation's airways. However, he is a convicted felon on probation, and he is willing to lie if he believes it will benefit him. He cannot be trusted with our nation's secrets. [*Id.* at 14-15.]

Discussion

On appeal, Applicant asserts that “there are many errors, both factual and assumptive with the judge’s findings” and that “the judge and the prosecutor allowed their personal biases and beliefs to impede their judgment and infringe on their impartiality.” Appeal Brief at 1. Additionally, he argues that the Judge failed in his application of the Whole-Person Concept.

We turn first to Applicant’s assertion that the Judge erred in his findings of fact. When a judge’s factual findings are challenged, the Board must determine whether “[t]he Administrative Judge’s 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.” Directive ¶ E3.1.32.1. Applicant does not identify any specific finding of fact that is wrong, but his appeal takes broad aim at the Judge’s conclusion that he assaulted his wife in December 2020 and that he resisted arrest and assaulted a police officer in September 2022.

In his brief, Applicant re-states several of his arguments from the hearing as to the first incident—that his wife “has a few issues,” that she has “a very short fuse,” and that she “also drinks heavily.” Appeal Brief at 2. As to the second incident, Applicant reiterates his argument that he did not bite the officer, as evidenced by the fact that there was no broken skin. Contrary to Applicant’s argument that “[t]hese facts appear to have been completely dismissed by the judge,” the Judge’s lengthy decision explicitly considers and weighs all the evidence that Applicant claims was ignored. Our review confirms that the Judge’s findings “reflect a reasonable interpretation of the record evidence as a whole” and that there is no “evidence that fairly detracts from the weight of the evidence supporting those findings.” ISCR Case No. 02-12199 at 3 (App. Bd. Aug. 8, 2005). We conclude that this assignment of error is without merit.¹

¹ As a general rule, the doctrine of collateral estoppel applies in DOHA proceedings, under which Applicant would not be permitted to contend that he did not engage in the criminal acts of September 2022 (SOR ¶ 2.a) for which he was convicted. *E.g.*, ISCR Case No. 04-05712 at 7–8 (App. Bd. Oct. 31, 2006). Here, the Judge elected to resolve both the 2020 and the 2022 incidents on their merits, rather than to apply collateral estoppel to the latter. Because the Judge’s findings and conclusions are amply supported by record evidence and his election not to apply collateral estoppel was not challenged by the Government, we decline to address whether this case warranted any exception to the general rule (*e.g.*, on the grounds that Applicant’s plea bargain “create[d] an actual disincentive to litigate” the charges). *Id.* at 9.

We turn next to Applicant's assertion that Department Counsel was biased against him. DOHA proceedings are adversarial in nature. *E.g.*, ISCR Case No. 03-06174 at 5 (App. Bd. Feb. 28, 2005). Department Counsel represent the Government's interests in these proceedings and are not required to be neutral, impartial, or unbiased. In performing their professional responsibilities, Department Counsel are routinely expected to advocate in a manner that is contrary to an applicant's positions or interests. A claim of bias against a Department Counsel is not an appealable issue. ISCR Case No. 19-00883 at 5 (App. Bd. Dec. 20, 2022).

To the extent that Applicant is instead claiming Department Counsel acted in an unfair or inappropriate manner, there is a rebuttable presumption that federal officials carry out their duties in good faith. *E.g.*, ISCR Case No. 00-0030 at 3 (App. Bd. Sep. 20, 2001). A party seeking to rebut that presumption has a heavy burden of persuasion on appeal. Here, Applicant does not carry his burden. Applicant fails to identify anything in the record below that suggests a basis for a reasonable person to conclude that Department Counsel acted improperly, unfairly, or unprofessionally, nor does he cite specific portions of the transcript or decision in support of his allegation, as required by the Directive. Directive ¶ E3.1.30 (the appeal brief must state the specific issue or issues being raised and cite specific portions of the case record supporting any alleged error). This assignment of error is without merit.

Applicant also argues that the Judge was biased. Again, Applicant fails to cite specific portions of the transcript or decision in support of his allegation. In the context of the assault on the police officer, however, Applicant makes the following broad assertion: "[T]he judge dismissed my explanations because, in my opinion, his values, beliefs, and [the] way he lives his life is much different from me. His values, beliefs and lifestyle is no better or worse than mine. It is different." Appeal Brief at 3.

We do not find this vague and undefined argument of bias persuasive. 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. The issue is not whether Applicant personally believes that the Judge was biased or prejudiced against him but, rather, whether the record "contains any indication that the Judge acted in a manner that would lead a reasonable person to question the fairness and impartiality of the Judge." ISCR Case No. 01-04713 at 2 (App. Bd. Mar. 27, 2003). Having examined the record, paying particular attention to the transcript, we find nothing that would persuade a reasonable person that the Judge was lacking in the requisite impartiality, and Applicant points us to nothing that supports his claim.

Applicant does not directly challenge the Judge's adverse credibility determination, although this case rests largely on the fact that the Judge simply did not believe Applicant. 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 Applicant was not credible; 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 testimony about the 2020 event was "intentionally false"; and that Applicant "is willing to lie if he believes it will benefit him." Decision at 8, 10, 15. The Directive requires the Appeal Board to give deference to a judge's credibility determinations. Directive ¶ E3.1.32.1. The Judge's credibility assessments in this case

are well within his authority, and nothing in Applicant's brief or in our review of the record gives us reason to disturb the Judge's adverse determination.

In his final argument, Applicant asserts that the Judge erred in his Whole Person analysis, but his argument merely 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).

In conclusion, 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.'" *Dep't 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. 24-00389 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: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board