

Applicant raised the following issues on appeal: whether the Judge erred in his findings of fact and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is 47 years old, has worked in the same position for over six years. He is married with three children and three stepchildren. His wife does not work, and he earns about \$149,000 annually. He has maintained a security clearance since about 1996.

Between about 2007 and 2008, Applicant's salary was reduced from about \$135,000 to about \$85,000 because of a change in his employer's contract. Due to the salary reduction, he found it difficult to support his family and manage his obligation. About a year later, his salary increased to approximately \$127,000.

The alleged debts (SOR ¶¶ 1.a through 1.f) total about \$108,000 and include two mortgages, a vehicle repossession, and an adverse judgment. Applicant requested permission for short sale of his home to resolve the primary and secondary mortgages on that property, but his request was denied. The home was foreclosed. He did not remember receiving an IRS Form 1099 for any deficiency. He addressed these debts in a sporadic manner over the years, and no actual payments have been made toward them. He testified that he was recently offered an opportunity to settle the mortgages for about \$6,000. In a footnote, the Judge noted there was no evidence showing the offer was accepted and also pointed out there was a letter from the creditor indicating a payment was to be drafted in the amount of the offer on March 16, 2016.

Applicant admits the charged-off account for about \$9,100 (SOR ¶ 1.c) is a valid debt. Although he has not made any payments toward that debt, it no longer appears on his credit report. He prefers to be "saving [his] money and knocking [his debts] off one at a time." Decision at 3. SOR ¶ 1.d is an adverse judgment for about \$5,000 that he initially reported he planned to have satisfied by August 2015, but did not investigate it until the following month. At the hearing, he presented a cashier's check that he intended to send to the collection agent to satisfy the debt. Although the record was held open after the hearing, no evidence was presented showing that the cashier's check was mailed or transacted. Applicant did provide proof that the debt for about \$2,600 in SOR ¶ 1.e was paid in full.

The charged-off debt for about \$29,800 in SOR ¶ 1.f related to a repossessed vehicle. Applicant first started to investigate this matter about four years ago, but has not checked on it since. He disagrees with the amount at issue. A confirmation settlement agreement dated the day after the hearing states a lump-sum payment of about \$6,000 was due in June 2016. No evidence of that payment was provided.

Applicant's salary has incrementally increased since his salary was reduced several years ago. He has sufficient income to cover his current financial obligations and has a monthly net remainder of approximately \$1,300. He has no notable reserves in savings or checking accounts.

The Judge's Analysis

The Judge found for Applicant on the debt in SOR ¶ 1.e that was satisfied and against him on the remaining debts. While Applicant suffered a dramatic decrease in his salary several years ago, he provided no examples of what he did to make it through that difficult time other than contacting his mortgagors. The Judge noted that, besides the proof that the debt in SOR ¶ 1.e was paid, no other documentary evidence was provided to show that any other debts have gone beyond the settlement negotiation phase or establish that significant progress has occurred.

Discussion

In his appeal brief, Applicant contends that he resolved the debts for which the Judge made unfavorable findings. First, he claims the mortgage in SOR ¶ 1.a was satisfied on the sale of the home. We cannot find evidence in the record supporting that claim. Second, he claims that he testified the second mortgage in SOR ¶ 1.b was settled for about \$6,000 and that confirmation of the agreement and payment were provided as an exhibit. At the hearing, he testified that he contacted the mortgage company about the debts in SOR ¶¶ 1.a and 1.b, that he worked out a settlement agreement initially but did not follow through on that agreement, and that he was expecting a call from the company in the near future. Tr. at 43-44, 46, and 49-50. In the decision, the Judge correctly noted that Applicant provided in his post-hearing submission a copy of the settlement offer and a letter from the creditor indicating the amount of the offer was to be drafted on March 16, 2016.¹ Evidence confirming payment of the debt was not provided. Third, he claims that he testified he would resolve the debt in SOR ¶ 1.c and “has since resolved this debt.” Appeal Brief at 6. The record contains no documentary proof of that resolution. His statement in the appeal brief that he resolved this debt constitutes new evidence that the Appeal Board cannot receive or consider. Directive ¶ E3.1.29. Additionally, he claims the debt in SOR ¶ 1.f was resolved through a lump-sum payment in accordance with a settlement agreement. No proof of that payment is contained in the record, and his assertion in the appeal brief that it has been paid constitutes new evidence that we cannot consider. *Id.* In summary, Applicant has failed to show there is a sufficient basis for challenging any of the Judge's findings for the debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. Those findings are sustainable because they are based on substantial evidence or constitute reasonable inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Appellant also claims the debt in SOR ¶ 1.d was satisfied through the cashier's check that he showed the Judge at the hearing. While the Judge's finding that there was no evidence presented to show the cashier's check was “mailed or transacted” is correct, we recognize that cashier's checks are unique negotiable instruments in which a bank is both the drawer (the person who signs ordering

¹ The settlement offer was dated September 15, 2015, and indicated it was time sensitive. The offer consisted of two pages, but only the first page was included in the record.

the payment) and the drawee (the person ordered to make the payment).² Under usual circumstances, the existence of a cashier's check is strong evidence that the specified amount was committed for payment to the named payee. Nevertheless, even if the Judge erred regarding that finding, it did not likely affect the outcome of this case in view of the magnitude of Appellant's other delinquencies. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant further contends that the Judge did not weigh and consider all relevant evidence. He cites to such things as his salary reduction in 2007, his character evidence, and the steps he has taken to resolve the debts. However, the Judge made findings about those matters. Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). We also conclude the Judge's the whole-person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2.

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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

² Uniform Commercial Code ¶ 3-104. Generally, a person transfers money to a bank before the bank will issue the cashier's check that commits it to make the payment to a named payee.

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board