



**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: May 16, 2023

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p>	<p>ISCR Case No. 22-01667</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 12, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. Department Counsel mailed the Government’s File of Relevant Material (FORM) to Applicant on October 28, 2022, and afforded him an opportunity to file objections or submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. On March 16, 2023, after reviewing the record, Defense Office of Hearings and Appeals Administrative Judge Bryan J. Olmos denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had eight delinquent Department of Education (DoE) student loans totaling about \$33,000 and that he had three other delinquent debts totaling about \$46,000, including a past-due mortgage account. The Judge found against Applicant on each of the SOR allegations. For reason stated below, we remand the Judge's decision for corrective action.

In his appeal brief, Applicant provides new evidence, including a DoE document and documents concerning other debts. The Appeal Board is prohibited from considering new evidence. Directive ¶ E3.1.29.

Applicant's student loans arose from his attendance at ITT Technical Institute (ITT) between 2013 and 2015, for which he was awarded an associate's degree. In the decision, the Judge noted that Applicant supplied a copy of a DoE loan rehabilitation application, dated March 2022, and that Applicant provided no evidence of payments in compliance with it. Decision at 2.

In ISCR Case No. 21-01688 (App. Bd. Jan. 30, 2023), the Appeal Board took administrative notice of a DoE press release of August 16, 2022, that announced it was discharging ITT student loan debts. See <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>. We again take administrative notice of that press release, in which the Secretary of Education is quoted as saying:

It is time for student borrowers to stop shouldering the burden from ITT's years of lies and false promises[.] . . . The evidence shows that for years, ITT's leaders intentionally misled students about the quality of their programs in order to profit off federal student loan programs with no regard for the hardship this would cause. [Appeal Board Exhibit 1.]

See also ISCR Case No. 20-03688 (App. Bd. Mar. 2, 2023) and ISCR Case No. 21-02722 (App. Bd. Apr. 6, 2023), other remands involving DoE's discharges of student loans.

Based on the foregoing, the Judge's decision is remanded so that he may determine the impact of DoE's action on Applicant's student loans, which makes up a large percentage of the alleged debt. The Judge may reopen the record to receive additional evidence from the parties. On remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board retains no continuing jurisdiction over a remanded decision. However, a Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28. and E3.1.30.

Order

The decision is **REMANDED**.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board