

KEYWORD: Guideline D; Guideline E; Guideline F; Guideline J

DIGEST: The principle feature of the Judge’s analysis is not that Applicant failed to take action to resolve the student loans, but rather that he failed to take action to resolve them in a timely manner. Access to protected information requires faithful adherence to the rules and regulations governing such activity. A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake. Adverse decision affirmed.

CASENO: 16-03093.a1

DATE: 04/25/2019

DATE: April 25, 2019

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-03093
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 5, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 6, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guidelines D, J, and E were not raised as an issue on appeal and are not addressed further below.¹ Consistent with the following, we affirm.

The Judge’s Pertinent Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He honorably served in the military and has held a security clearance in the past. The SOR alleged ten delinquent debts totaling over \$24,000. The Judge found against Applicant on six delinquent student loans and for him on the other debts, including a duplicate student loan allegation.

Credit reports in evidence established the student loans in question. The Judge noted that the student loans are difficult to track through credit reports because of the way they were “issued, defaulted, consolidated, and rehabilitated, seldom with the same account numbers attached to the accounts.” Decision at 3. Two of the alleged student loans (SOR ¶¶ 4.h and 4.i) were paid after the issuance of the SOR. While some of Applicant’s other student loans were also resolved after issuance of the SOR, the payment documentation provided either did not have account numbers or the listed account numbers did not match those of the alleged debts.

Applicant attributed the delinquent student loans to not understanding the interplay between the military tuition assistance program, his grants, and his loans. He acknowledged receiving dunning letters from student loan creditors beginning in 2011. He disputed the student loans with the credit bureaus, but no changes were made. He produced little to show his efforts to resolve the student loans before the SOR was issued. He provided character reference letters that describe him as honest and trustworthy.

The Judge’s Pertinent Analysis

Applicant accumulated delinquent student loans and largely ignored them before the SOR

¹ In the formal findings, the Judge found for Applicant on Guideline D and against him on its subparagraphs, *i.e.*, SOR ¶¶ 1.a and 1.b. Applicant’s counsel contends that, based on a reading of the decision, the Judge’s formal findings concerning those subparagraphs were a typographical error. We agree. *See, e.g.*, DISCR OSD Case No. 91-1449 at 3, n.2 (App. Bd. Apr. 26 1993) (In addressing an inconsistency in the formal findings, we read a Judge’s decision in its entirety to discern his or her meaning.).

was issued. These delinquencies are recent, frequent, and were not incurred under unusual circumstances. By 2011, he was aware that his military tuition assistance did not cover the loans. Thereafter, he did not act responsibly in addressing these debts until he received the SOR. He failed to document his efforts to deal with the creditors after becoming aware of the defaulted loans.

Applicant has made a number of payments to resolve student loans that may or may not correlate to those alleged in the SOR. Even if he made those payments on the alleged student loans, he did not undertake such efforts until after he received the SOR. Such belated efforts do not mitigate the security concerns arising from the alleged student loans.

Discussion

Applicant contends that he resolved each of the student loans that the Judge found against him. In doing so, he cites to his exhibits that the Judge indicated were difficult to decipher. Based on our review of the record, the Board concludes that the Judge's material findings regarding the student loan debts are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). In this regard, we note the principle feature of the Judge's analysis is not that Applicant failed to take action to resolve the student loans, but rather that he failed to take action to resolve them in a timely manner. Access to protected information requires faithful adherence to the rules and regulations governing such activity. A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

Applicant contends that the Judge did not consider all of the record evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. For example, he argues that he resolved the alleged student loans, that he was the victim of predatory lending practices, and that the delinquencies were the result of his confusion regarding their status. However, Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough 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. 17-02488 at 3-4 (App. Bd. Aug. 30, 2018).² 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. *Id.* at 3-4. Additionally, the Judge complied with the requirements of the Directive in his whole-person analysis by considering the totality of the evidence in reaching his decision.

Applicant has failed to establish the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The

² Applicant cites to an assertion he made in his response to the SOR which could lead to the conclusion that he was a victim of predatory lending practices. There is no corroboration for the assertion. Also, there is no detailed explanation as to how much of his delinquent debt can reasonably be attributed to the alleged predatory lending practices.

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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for access to national security eligibility will be resolved in favor of the national security.”

Order

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