

KEYWORD: Guideline F; Guideline E

DIGEST: Appeal Board does not have supervisory authority over other DOHA personnel involved in processing security clearances. Adverse decision affirmed.

CASE NO: 19-01846.a1

DATE: 09/09/2020

DATE: September 9, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-01846
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Leon J. Schachter, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 26, 2019, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 16, 2020, 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 issues on appeal: whether the Judge failed to issue a decision in a timely fashion; whether the Judge’s findings of fact contained errors; whether the Judge erred by not addressing Applicant’s request for a conditional grant of a clearance in accordance with Directive, Encl. 2, App. C; and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact and Analysis

The Judge made the following findings pertinent to the issues raised on appeal: Applicant’s SOR alleges two delinquent student loan accounts totaling over \$238,000. Applicant incurred these debts while pursuing graduate studies from 1989 until 1995. Applicant contended that he had made payments on these loans when the post-graduate grace period expired in the late 1990s. However, because the size of his family grew along with attendant financial responsibilities, Applicant obtained deferments. Although a collection agent began contacting him in 2014, Applicant took no steps to repay. His own children were by then in college, and he decided to pay their tuition so as not to burden them with loans. He paid their college expenses through his current income.

When confronted with his delinquent loans during his 2018 clearance interview, Applicant stated an intent to make payment arrangements. However, during a follow-on interview a few months later, he had not made contact with the creditor. He finally reached out to the creditor in early 2019 and began the process of rehabilitating the loans. He entered into a rehabilitation plan about a month later and made the required payments. By the close of the record, Applicant was awaiting the details of a regular repayment plan, which might entail greater monthly payments than he is currently making. He claims to have the necessary income to pay the more than \$237,000 that he still owes on these loans and that, “in a pinch,” his assets are sufficient to resolve the debts in full. His credit reports disclose no other financial problems. Decision at 2.

Applicant submitted character references from two co-workers, a long-time friend, and his oldest child. Each of these references describe him as honest and trustworthy, and they all recommend him for a clearance. However, none of these persons disclosed knowledge of the government’s security concerns regarding Applicant’s finances.

The Judge concluded that Applicant met none of the Guideline F mitigating conditions. He characterized Applicant’s education loans as recent because they are ongoing and stated that they were not due to circumstances unlikely to recur. He cited to evidence that Applicant prioritized his children’s educational debts over paying off his own financial obligations, which was a circumstance within his control. Applicant has had no financial counseling and his SOR debts are only “half-way

to being resolved.” Decision at 4. Though noting Applicant’s having made rehabilitation payments, the Judge concluded that Applicant had not demonstrated a sufficient track record of debt resolution. He reiterated his finding that none of Applicant’s character references appeared to know about his security-significant financial problems.

Discussion

Applicant argues that the Judge took over six months to issue his decision, which he contends does not comply with the requirements of Directive ¶ E3.1.25 that the Judge “shall make a written clearance decision in a timely manner[.]” He contends that had the Judge issued a timely decision, the facts would have been clearer in his mind and he would not have made the other errors raised in his appeal. However, as Applicant himself notes, the Directive does not define the term “timely manner.” Neither does it impose actual time standards on Judges. Despite his claim that the Judge acted through faulty memory, Applicant does not articulate how his rights were actually impaired by the the elapse of time between the hearing and the issuance of the decision. Furthermore, the Appeal Board does not have supervisory authority over other DOHA personnel involved in processing security clearances. *See, e.g.*, ISCR Case No. 17-04097 at 2 (App. Bd. Apr. 30, 2019). Applicant has not demonstrated that he was denied the due process rights afforded by the Directive. *See, e.g.*, ISCR Case No. 12-09421 at 3 (App. Bd. Oct. 2, 2018).

Applicant contends that the Judge’s findings of fact contained misstatements. Among other things, he takes issue with the Judge’s finding that none of his character references knew about his security-significant circumstances. In fact, none of these references explicitly disclose knowledge of Applicant’s delinquent financial loans. Although it is possible that Applicant’s daughter may have been aware of his problems, given her close relationship to him, it is far from certain that such is the case. After considering the record as a whole, we conclude that the Judge’s material findings of security concern are supported by substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge’s findings. *See, e.g.* ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020).

At the close of the hearing, during final argument, Applicant requested that the Judge grant him a conditional clearance in accordance with Directive, Encl. 2, App. C. Tr. at 96. Obviously, the Judge did not act favorably upon this request, nor did he address it in his decision. Applicant urges us to remand the case to the Judge for a new decision in which he presents his reasoning for not granting a conditional clearance. We note the Judge’s analysis, which is consistent with the record that was before him. The record evidence—which includes Applicant’s decision not to pay his student loans over a course of years and the nearly \$240,000 still owed despite Applicant’s apparent ability to pay—supports a decision not to grant a conditional clearance. Applicant has not articulated a persuasive reason for us to remand the Decision to the Judge. On this issue, as well as in regard to his challenge to the Judge’s mitigation analysis as a whole, Applicant is merely expressing a disagreement with the Judge’s weighing of the evidence, which is not 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. 18-02581 at 4.

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

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan

Michael Y. 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