



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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KEYWORD: Guideline B; Guideline F

DIGEST: Applicant’s admission proved the allegation. *See* Directive ¶ E3.1.14. The Directive presumes there is a nexus or rational connection between proven circumstances under any of its guidelines and an applicant’s security eligibility. Direct or objective evidence of nexus is not required. *Id.* Applicant has failed to establish the Judge erred in concluding that Disqualifying Conditions 19(b) and 19(c) applied in this case and his delinquent student loan account raises security concerns. Having admitted the delinquent account, Applicant was then responsible for mitigating the security concerns arising from it and has the ultimate burden of persuasion in obtaining a favorable clearance decision. *See* Directive ¶ E3.1.15. Adverse Decision is Affirmed.

CASE NO: 19-02667.a1

DATE: 11/03/2021

Date: November 3, 2021

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| <p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>ISCR Case No. 19-02667</p> |
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Scott J. Friedman, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 25, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 4, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Pamela C. Benson denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found in favor of Applicant on the Guideline B allegations. Those favorable findings have not been raised as an issue on appeal. Applicant raised the following issues on appeal: whether the Judge erred in applying the Guideline F disqualifying conditions, whether the Judge erred in her findings of fact and conclusions, and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. For the reasons stated below, we affirm the Judge’s decision.

The Judge’s Findings of Fact

Applicant is in his forties, is married with children, and has earned an associate’s and bachelor’s degree. His employment with a defense contractor is contingent on him obtaining a security clearance. Character reference letters describe him as dependable and indicate he would be a great asset to any organization. He and his wife earned over \$150,000 in 2019 and about \$117,000 in 2020.

Applicant has about \$44,000 in student loans that were referred for collection. In responding to the SOR, Applicant admitted this sole Guideline F allegation. After obtaining his bachelor’s degree in 2004, he began repaying the student loans. In 2007, he stopped making payments after losing his job and the loans were placed in forbearance. Upon obtaining another job, he asked the creditor to reduce the amount of the loan payments due to limited income. This request was denied. The loans were eventually referred for collection.

In about 2010, the creditor told Applicant that he needed to rehabilitate the student loans by paying about \$470 per month for six months and then the amount of the payments would be reduced. After making about three payments, he was informed the amount of the monthly payment needed to be increased because another loan was added to the rehabilitation plan. He stopped making payments on the student loans and has not made any payments in the past decade. Since defaulting on the loans, he has invested about \$3,500 in a failed business venture and traveled extensively overseas.

“Applicant admitted that he has been contacted several times by different collection companies requesting payments over the years” (Decision at 6) but denied any recent contacts. His recent attempts to reestablish contact with the creditor were unsuccessful, and he has been unable to determine who holds the loans. He did not provide any documentation corroborating those attempts. His 2010 Federal tax refund was withheld but he has received refunds since then. He intends to repay the student loan account but did not provide details of his plan. He does not have any other delinquent debts.

The Judge's Analysis

Disqualifying Conditions 19(b), *unwillingness to satisfy debts, regardless of the ability to do so*, and 19(c), *a history of not meeting financial obligations*, apply in this case. Applicant's repayment of the student loans was not a priority given his travel, business investment, and ongoing financial support to family members. His six-figure income in the last two years highlights his unwillingness to satisfy his debts. He has failed to demonstrate that he acted responsibly or in good-faith in his efforts to repay the student loans. He has failed to establish that the student loans are being resolved or addressed. His promises to pay the student loans in the future falls short of mitigating the alleged security concerns.

Discussion

Disqualifying Conditions

Applicant contends the Judge erred in concluding his "single debt establishes an unwillingness to satisfy debts and a history of not meeting financial obligations." Appeal Brief at 7. He argues Disqualifying Conditions 19(a) and 19(c) must involve a pattern of behavior and multiple debts. This argument is not persuasive. As the Appeal Board has previously stated, a single debt can be sufficient to raise Guideline F security concerns. *See, e.g.*, ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016). Additionally, a single debt that remains unpaid over a period of years can properly be characterized as a history of not meeting financial obligations. Furthermore, the evidence shows that Applicant had more than one student loan that was delinquent. In disclosing the alleged student loan account in his security clearance application, Applicant stated, "I tried to consolidate in order to get lower payment plan, but i (sic) was told that i (sic) have to get all the loans out of default status then they may work with me." Government Exhibit (GE) 1 at 83.

It is also worth noting that Applicant admitted the SOR allegation in question. His admission proved that allegation. *See* Directive ¶ E3.1.14 and ISCR Case No. 02-21087 at 3-4 (App. Bd. Aug. 19, 2005). The Directive presumes there is a nexus or rational connection between proven circumstances under any of its guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018). Direct or objective evidence of nexus is not required. *Id.* Applicant has failed to establish the Judge erred in concluding that Disqualifying Conditions 19(b) and 19(c) applied in this case and his delinquent student loan account raises security concerns. Having admitted the delinquent account, Applicant was then responsible for mitigating the security concerns arising from it and has the ultimate burden of persuasion in obtaining a favorable clearance decision. *See* Directive ¶ E3.1.15.

Findings of Fact

Applicant claims the Judge erred in making a finding of fact. We examine a challenged finding to determine whether it is supported by substantial evidence, *i.e.*, “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.” *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018) (quoting from Directive ¶ E3.1.32.1).

Applicant argues the Judge erred in finding “Applicant admitted that he had been contacted several times by different collection companies requesting payment over the years.” Appeal Brief at 7, quoting from Decision at 6. This assignment of error has merit. Applicant testified that his student loan account was placed for collections in about 2008. Tr. at 70-71. In his background interview, he stated the student loan company called him to increase the amount of the payments while he was participating in a rehabilitation program. He stopped making the payments because he could not afford the increase. GE 3 at 9. He also testified that he called about six different collection agencies to track down the student loans but was repeatedly informed the account was sold to another company. Tr. at 48. Additionally, he indicated that he has not made any payments on student loans for more than ten years and no one has contacted him about the loans. Tr. at 72. While the evidence does not support a finding that collection companies contacted him “several times” requesting payments, this was a harmless error because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020). In this regard, the Judge’s overall conclusion that Applicant failed to mitigate the security concerns arising from the alleged debt is sustainable. For example, Applicant failed to establish when he called the collection companies to identify the one handling his student loan account. More specifically, we are unable to determine whether those attempts were spread out over the past decade or only occurred recently after his eligibility to obtain a security clearance was placed in jeopardy. *See, e.g.*, ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017)(the timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation). The lack of such evidence is a factor that could be considered in evaluating whether Applicant established he acted responsibly in attempting to resolve this debt.

Judge’s Conclusions

Applicant disagrees with two of the Judge’s conclusions, claiming they were not supported by record evidence. These conclusions are: (1) “Applicant stated that he does not have enough income to repay his student loans.” and (2) “There was a ‘long period of inaction’ in which [Applicant] failed to attempt to resolve his student loan debt.” Appeal Brief at 7, quoting from Decision at 11 and 12. We examine challenged conclusions to determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

These challenges are not meritorious. Regarding the first challenge, Applicant argues that the conclusion about his lack of income is incorrect as of “June 30, 2021.” Appeal Brief at 12. The conclusion in question, however, must be read in context. *See, e.g.*, ISCR Case No. 18-02181 at 5 (App. Bd. Aug. 19, 2019)(a Judge’s individual words or sentences are not reviewed in isolation but instead in light of the entire decision). From our review, this challenged conclusion was not referring to Applicant’s income on the date of the hearing, but instead was generally addressing his financial status during the entire period of this indebtedness. The evidence shows that Applicant defaulted on the student loan account when he lost his job in about 2007 (Tr. at 47-48

and 70-71), he was unable to make increased payments under a rehabilitation program in about 2009 (Tr. at 48 and 71-72), he has made no payments on the student loan account in the past decade (Tr. at 72), and, as discussed earlier, he failed to establish when he made the attempts to track down the collection company handling that account. Both of the Judge's challenged conclusions were reasonable inferences drawn from the evidence. In short, Applicant failed to show those conclusions were arbitrary, capricious, or contrary to law.

Mitigating Conditions

Applicant argues that the Judge failed to apply properly the mitigating conditions. He asserts, for example, that the debt at issue was incurred a long time ago and is infrequent, he made responsible and good-faith efforts to resolve it, and he is able and willing to pay it. He also argues the Judge failed to consider that he contacted multiple debt collectors to determine who held his student loan account, even though the Judge made findings about those efforts. Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Conclusion

Applicant has failed to establish the Judge committed any harmful errors. 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 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