

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant’s Counsel contends that the Judge erred in some of his findings of fact. Applicant’s Counsel also contends the Judge erred in finding he and his second wife were divorced. Applicant’s security clearance application reflects that he was widowed from his second wife. He testified that his second wife was paying on the student loans until she passed away. Applicant’s Counsel argues this error had an “immense affect” in making a whole-person assessment. He also notes this was a condition beyond Applicant’s control that the Judge did not address in his decision. Applicant’s Counsel further points out that the Judge erred in computing the total amount of the alleged student loans. From our review of the record, we cannot conclude the identified errors were harmless. Decision is Remanded.

CASE NO: 19-00325.a1

DATE: 01/06/2021

DATE: January 6, 2021

In Re:)	
)	
-----)	ISCR Case No. 19-00325
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Frederick D. Greco, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 2, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 10, 2019, Department Counsel amended the SOR by adding a Guideline E (Personal Conduct) allegation. On October 16, 2020, after the hearing, Administrative Judge Roger C. Wesley 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 E allegation and on two of the five alleged debts. The Judge’s favorable findings were not raised as issues on appeal. The Judge found against Applicant on three alleged delinquent student loans.

Applicant’s Counsel contends that the Judge erred in some of his findings of fact. In his arguments, he highlights that the Judge concluded:

Applicant’s admitted debt delinquencies negate the need for any independent proof. See Directive 5220.6 at E3.1.14; McCormick on Evidence, § 262 (6th ed. 2006) His admitted debts and tax filing lapses are fully documented and create some judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004). [Decision at 8.]

This conclusion contains errors. In responding to the SOR, Applicant denied the student loans with explanations. His denial of the alleged student loans did not negate the need for the Government to prove those controverted debts. Directive ¶ E3.1.14. Furthermore, the SOR neither alleged that Applicant had tax filing lapses nor were any tax filing lapses raised as an issue during this proceeding.

Applicant’s Counsel also contends the Judge erred in finding he and his second wife were divorced. Applicant’s security clearance application reflects that he was widowed from his second wife. Government Exhibit 1 at 13 and 24. He testified that his second wife was paying on the student loans until she passed away. Tr. at 76. Applicant’s Counsel argues this error had an “immense affect” in making a whole-person assessment. Appeal Brief at 7-8. He also notes this was a condition beyond Applicant’s control that the Judge did not address in his decision.

Applicant’s Counsel further points out that the Judge erred in computing the total amount of the alleged student loans. The Judge found the student loans exceeded \$127,000, when the alleged amounts totaled about \$117,200. Applicant’s Counsel indicated this “appears to be a scrivener’s error.” Appeal Brief at 1.

From our review of the record, we cannot conclude the identified errors were harmless. Given these circumstances, we conclude the best course of action is to remand the case. The Judge should correct the identified errors, as appropriate, and issue a new decision in accordance with Directive ¶ E3.1.35. Applicant has raised other issues that are not ripe for consideration at this time.

Order

The Decision is **REMANDED**.

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