



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 APPEAL BOARD  
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Date: February 16, 2022

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In the matter of: )  
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 Applicant for Security Clearance )  


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ISCR Case No. 20-00290

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Carl Anthony Marrone, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 29, 2020, 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 November 18, 2021, after the hearing, Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged that Applicant owed about \$51,000 for 13 delinquent debts; ten of those debts were student loans that totaled about \$49,000. Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose these 13 delinquent debts on his October 2017 security clearance application (SCA). Applicant admitted all the Guideline F allegations, but denied that he intentionally withheld any information on his SCA. The Administrative Judge found against Applicant on all allegations.

On appeal, Applicant raised the following issues: whether the Judge misweighed the evidence, whether he misapplied the Guideline F and E mitigating factors, whether he erroneously concluded that “the mere presence of debt” raises security concerns, and whether he erroneously found against Applicant on the Guideline E falsification allegation “despite no evidence to support that conclusion . . . .” Appeal Brief at 5. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is in his early forties. Since about 2006, he worked for a series of defense contractors. On three occasions, Applicant has been unemployed when his employers lost the contracts to which he was assigned: for two months in 2007, for one month in 2010, and between October 2014 and March 2015. He has been steadily employed since March 2015.

Applicant earned an associate’s degree in 2006 and a bachelor’s degree in 2014, funding his studies with federally-subsidized student loans. He testified that he made payments on the student loans until about 2015, when he was unemployed, and has made no payments on his student loans in the past six years since then. When questioned about his failure to resume payments when he regained employment, Applicant stated that he forgot about them.

When Applicant completed his SCA in October 2017, all of the delinquent debts alleged in the SOR were more than 120 days past due, in a collection status, or otherwise delinquent. Applicant did not list any of the debts or otherwise indicate that he had any financial problems. In his background interview, he initially denied that he had any delinquent debts. When confronted with the delinquent student loans, Applicant stated that he was paying them on a monthly basis. In responding to the SOR, Applicant denied any intent to falsify and stated that he was confused by the financial questions. At hearing, he testified that he did not read the questions carefully or did not pay attention to what was being asked.

In March 2019, Applicant was again interviewed and stated that he intended to establish a repayment plan. However, he took no action regarding his student loans until July 2021, the month prior to his hearing, by which time the ten loans totaled about \$58,000. At that point, he enrolled in a student loan rehabilitation program, which will require him to pay \$61 monthly for nine months to return his student loans to a current status. Prior to his August 2021 hearing, Applicant had not made any payments, relying on the temporary relief for student loan payments provided by the Federal Government due to COVID 19.

Applicant called four witnesses at his hearing who testified to his professionalism, reliability, honesty, and trustworthiness.

### **The Judge’s Analysis**

Regarding the Guideline F allegations, the Judge concluded:

None of [the] mitigating conditions can be applied here. Applicant’s financial problems are recent, in that, he still owes more than \$58,000 in delinquent student loans . . . . He also owes another \$3,000 for three commercial debts. All of the debts

alleged in the SOR have been delinquent for nearly five years, but Applicant only began to address his debts less than a month before his hearing. After last paying on his student loans in 2015, he has yet to resume paying his debts despite being asked about his debts during interviews in 2018 and 2019 . . . . Even after he received the SOR in April 2020, he apparently took no action to resolve his debts. Applicant legitimately is excused under [Federal COVID relief] from making any student loan payments until 2022; however, this does not excuse the fact that he ignored his debts for several years before the pandemic began. [Decision at 6.]

Regarding the failure-to-disclose allegation, the Judge concluded:

All available information probative of Applicant’s intent when he completed his [SCA] shows that he decided to ignore the questions about his past-due debts. His claimed confusion about the question is not credible. His negative answers to those questions were not the result of mistake or misunderstanding. Inaccuracies resulting from a knowing decision to gloss over those questions cannot be discarded as unintentional. At the very least, Applicant did not intend to provide the government all of the financial information in his background . . . . Also contributing to my assessment of Applicant’s intent and credibility is the fact that he apparently lied to a government investigator during his first interview when he claimed he was making monthly payments on his student loans. [Decision at 7–8.]

## **Discussion**

### Debt vs. Delinquent Debt

In his brief, Applicant contends that debt alone does not render one unsuitable for a security clearance, noting that most people hold a mortgage. We concur that debt itself is typically not an issue. Instead, it is delinquent debt that raises a concern under Guideline F, as a failure to meet financial obligations “may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.” Directive, Encl. 2, App. A ¶ 18. Applicant argues that there must be other factors in play—such as substance abuse, gambling, drugs, or prostitution—for the debts to be disqualifying. This position has no support in either the Directive or Appeal Board precedent. *See, e.g.*, ISCR Case No. 19-03940 at 2–3 (App. Bd. Jan. 10, 2022) for a lengthier discussion of this issue. Financial problems, standing alone, may raise security concerns. The 13 delinquent debts alleged in the SOR were a sufficient basis for the Judge to deny Applicant’s security clearance eligibility.

### Timing of Payment Plan

Applicant challenges the Judge’s focus on the recent timing of Applicant’s student loan rehabilitation plan. He argues that Guideline F is “completely silent on the timing of efforts to repay” and that the Judge essentially created an additional requirement for Guideline F’s mitigating factors. Appeal Brief at 10. To the contrary, it is well-established that the timing of debt payments is a relevant consideration in evaluating whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under

Mitigating Condition 20(d), an applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts.” Directive, Encl. 2, App. A ¶20(d). The Appeal Board has consistently held that a “good-faith effort” generally requires that an applicant has established a meaningful financial track record of payments, to include evidence of actual debt reduction. *See, e.g.*, ISCR Case 05-01920 at 5 (App. Bd. Mar. 1, 2007). Promises of future repayment are not a substitute for a history of payment. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). Moreover, an applicant who begins to resolve security concerns only after having been placed on notice that his clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his personal interests are not threatened. *See, e.g.*, ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018). Given the facts that Applicant had made no payments on his student loans since 2015 and entered into his rehabilitation plan the month prior to the hearing, the Judge appropriately focused on the timing of Applicant’s efforts in determining that he had failed to mitigate security concerns under Guideline F.

### Mens Rea

On appeal, Applicant again asserts that his failure to disclose delinquent debts on his 2017 SCA was an innocent mistake and contends that there was no evidence to support the Judge’s determination under Guideline E that he deliberately failed to disclose. A controverted falsification allegation requires a Judge to make a finding as to an applicant’s intent or state of mind when the alleged falsification occurred, in light of the record as a whole. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). As a practical matter, such a finding may not always be based on an applicant’s statements concerning his intent but, rather, may rely on circumstantial evidence. *See, e.g.*, ISCR Case No. 12-05850 at 4 (App. Bd. Apr. 12, 2013).

Here, the Judge considered the state of the delinquent debt at the time Applicant completed his SCA, his initial denial to the background investigator, his subsequent lie to that same investigator, and his continued “conflicting and implausible explanations” for his failure to disclose. Decision at 8. We also note the Judge’s adverse credibility determination; to which we give deference. Directive ¶ E3.1.32.1. We conclude that the challenged finding is supported by “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. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

### Misweighing the Evidence

Applicant contends the Judge improperly analyzed the evidence, under-emphasizing the favorable evidence and over-emphasizing the unfavorable evidence. In his arguments, Applicant highlights his military service, attributes his financial problems to six months of unemployment in 2014–2015, and notes he has never been involved in a security incident. In essence, Applicant’s brief argues for an alternative interpretation of the record evidence, which is not sufficient to demonstrate the Judge’s findings and conclusions are erroneous. Applicant has not rebutted the presumption that the Judge considered all the evidence in the record, nor has he shown the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to the evidence. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant 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 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 national security.”

### **Order**

The decision is **AFFIRMED**.

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: Moira Modzelewski  
Moira Modzelewski  
Administrative Judge  
Member, Appeal Board