



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

Date: November 8, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 21-01284
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 20, 2021, 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 August 12, 2022, after the record closed, Administrative Judge Robert E. Coacher denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On appeal, Applicant essentially argues the Judge’s decision is arbitrary and capricious, noting that his financial delinquencies are recent and that he has taken action to resolve them. Consistent with the following, we reverse.

In deciding whether the Judge’s conclusions are erroneous, the Appeal Board will review the Judge’s decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 14-02563 at 4 (App. Bd. Aug. 28, 2015).

The SOR alleged that Applicant had eight delinquent Department of Education (DOE) student loans totaling about \$98,000. Applicant has other student loans that are neither alleged nor delinquent. The Judge found against Applicant on each of the alleged student loans.

Applicant began his college education in about late 2003. He received a bachelor’s degree in 2008 and post-graduate degrees in 2010 and late 2016. The Judge noted Applicant’s student loan history is confusing. We agree. This confusion appears to arise from several sources. First, Applicant mistakenly believed for several years that the alleged student loans were consolidated with his non-alleged student loans and that his student loan payments were servicing all of them. Second, the COVID student loan relief measures affected both his alleged and non-alleged student loans, and the manner in which credit reports reflect the status of those loans is confusing. Finally, Applicant submitted post-hearing documents that he believed reflected payments towards his student loans, but instead they were going to a commercial entity advocating on his behalf for student loan forgiveness or relief.

In the decision, the Judge concluded, “[o]ver an 18-year period, there is little to no evidence reflecting that he met his payment obligations on those loans.” Decision at 6. This conclusion is not sustainable based upon the following drawn from the Judge’s decision, the record, and Federal Government websites:

1. In responding to the SOR, Applicant denied the alleged student loans, stating they were in deferment. SOR Response at 2. Consequently, the burden was on Department Counsel to prove alleged facts that were controverted. Directive ¶ E3.1.14.

2. The Government’s evidence does not reflect exactly when Applicant’s alleged student loans first became delinquent.

3. Applicant claimed his student loans were deferred while he was on military orders. Government Exhibit (GE) 2 at 3; Tr. at 22. His security clearance application reflects that he was on military orders from September 2010 to September 2017. GE 1 at 17. Student loans may be deferred during certain periods of active duty and immediately following such service. *See* <https://studentaid.gov/site/default/files/military-student-loan-benefits.pdf>. No evidence contradicts Applicant’s assertion that the loans were deferred during his military service.

4. Applicant testified that every time he entered a new educational program, he did not have to make any student loan payments. Tr. at 30. He received his last advanced degree in December 2016. *Id.* “For most federal student loan types, after you graduate, leave school, or drop below half-time enrollment, you have a six-month grace period (sometimes nine months for

Perkins Loans) before you must begin making payments.” See <https://studentaid.gov/manage-loans/repayment>. The history of Applicant’s enrollment status is unknown.

5. During his background interview, Applicant provided two IRS letters dated February 20, 2020, reflecting payments to him were applied to a DOE debt. GE 2 at 4, 34, and 35. It is unknown to which student loans these withholdings were applied.

6. During the COVID-19 pandemic, payments on Federal student loans were deferred from March 13, 2020, until at least December 31, 2022. See <https://crsreports.congress.gov/product/pdf/R/R46314/14> at 11.

7. Credit reports reflect the alleged student loans were first reported in collection in September 2020 (GE 3 at 17-19), which was during the COVID-19 deferment.

8. In November 2020, Applicant applied for the DOE consolidated loan program (GE 2 at 17), loan forbearance program (GE 2 at 19-20), and loan rehabilitation program (GE 2 at 24-25). All of those actions took place before the issuance of the SOR in July 2021.

9. The alleged student loans were rehabilitated in September 2021 (attachment to SOR Response).

10. Applicant’s latest credit reports (GE 5 and 6) reflect the alleged student loans (now consolidated into four loans) are in good standing, showing payments from August 2021 to February 2022 (GE 5 and 6).

The Government has not established how long the alleged student loans were delinquent before they were deferred during the pandemic. The length of time a debt is delinquent is a factor to consider in assessing the security concerns arising from that debt. See generally, ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021); ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021); and ISCR Case No. 20-02219 at 3 (App. Bd. Oct. 28, 2021), affirming unfavorable clearance decisions involving student loans deferred during the COVID-19 pandemic because those loans were delinquent for significant periods before that deferment became effective. In this case, the record only supports that the alleged student loans were delinquent for less than a month (between February and March 2020) before the pandemic deferment went into effect and that Applicant took significant action starting in about November 2020 to bring them into a good standing while they remained deferred. This proven delinquency is minor. The Judge’s decision is reversed because it fails to consider important aspects of the case and runs contrary to the record evidence.

Order

The decision is **REVERSED**.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board