



**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: January 12, 2023

In the matter of:)	
)	
)	
-----)	ISCR Case No. 22-01201
)	
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 15, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On November 15, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR initially contained eight allegations. In the File of Relevant Material (FORM), Department Counsel withdrew six of the allegations. The Judge found against Applicant on the two remaining allegations. These asserted that Applicant had two Department of Education (DOE) student loans totaling over \$212,000 that were placed for collection.

On appeal, Applicant contends that the Judge erred in concluding that she still had two delinquent student loans and that there is no verifiable evidence she received financial counseling. These assertions of errors have mixed merit.

In responding to the FORM, Applicant presented a DOE letter, dated October 3, 2022 (Applicant's Exhibit (AE) 12). It indicates that, because she rehabilitated the student loans, DOE was notifying the national credit bureaus to delete the records of default from her record, and DOE advised her that she was again eligible for all of the benefits associated with the rehabilitated loans before the default. In the decision, the Judge cites to AE 12 in noting that the student loans have been transferred to a new loan servicer. Decision at 4. However, the Judge erred by failing to find the student loans were rehabilitated and by concluding the loans remained delinquent. Based on our review of the record, we conclude these errors were harmless. *See, e.g.*, ISCR Case No 19-01220 at 3 (App. Bd. Jun. 1, 2020) (an error is harmless if it did not likely affect the outcome of the case).

In the decision, the Judge focused on the paucity of evidence regarding Applicant's efforts to resolve the student loans before her receipt of the SOR. The Judge noted that her total income was about \$106,000 in 2021 and that:

Based on the evidence, it is clear that Applicant intentionally ignored her delinquent student loans for a substantial multi-year period. [Decision at 8.]

* * *

She described no contacts with the loan servicer or the DOE between December 2014, when the student loans were placed in default, and July 2022, when the SOR was issued. Instead, she seemingly avoided any good-faith efforts to resolve those delinquent debts. In light of her disinterest to take such actions until the SOR was issued, there are lingering questions if Applicant is currently in a better position financially than she had been, as well as continuing doubt about her current reliability, trustworthiness, and good judgment. [Decision at 10.]

The timing of an applicant's efforts to resolve debts is a relevant factor to consider in evaluating an applicant's case in mitigation. *See, e.g.*, ISCR Case No. 17-02463 at 2 (App. Bd. Sep. 10, 2018). Even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017). As the Judge concluded, "[a]n applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests." Decision at 9, citing ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018). Based on our review, we find no error in the Judge's conclusion that Applicant failed to establish that she acted responsibly in her handling of the student loans when they were delinquent.

As for the Judge’s conclusion regarding financial counseling, Applicant attached to her appeal brief a Certificate of Counseling for a bankruptcy filing that she did not previously submit to the Judge for consideration. The Appeal Board is prohibited from receiving or considering new evidence on appeal. Directive ¶ E3.1.29. We do not find any harmful error in the Judge’s conclusion that Applicant presented “no verifiable evidence of financial counseling” (Decision at 9), although we note the Judge made a finding that “Applicant sought guidance from a non-profit organization regarding student debt relief[.]” Decision at 4, citing AE 9.

Applicant failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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
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