



**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: March 2, 2023

In the matter of:	)	
	)	
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	)	
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 June 25, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis of 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. Department Counsel mailed the Government’s File of Relevant Material (FORM) to Applicant on December 3, 2021, and afforded him an opportunity to file objections or submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM by providing additional comments for the Judge to consider. On December 20, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had 12 delinquent Department of Education (DoE) student loans totaling about \$74,000 and that he had 10 other delinquent debts totaling about \$10,000. The Judge found against Applicant on each of the SOR allegations. For reason stated below, we remand the Judge’s decision for corrective action.

Applicant’s student loans arose from his attendance at ITT Technical Institute (ITT) between 2009 and 2013, from which he was awarded associate’s and bachelor’s degrees. In the decision, the Judge noted that Applicant supplied a letter from DoE stating that collection activity on his student loans was suspended pending further review. In his response to the FORM, Applicant stated his student loans would either be forgiven or he would begin a repayment plan as soon as possible to bring those loans into good standing. The Judge concluded that those loans remained unresolved.

In ISCR Case No. 21-01688 (App. Bd. Jan. 30, 2023), the Appeal Board recently addressed the issue of a Judge taking administrative notice, *sua sponte*, of DoE’s action to discharge ITT student loans. In that decision, we took administrative notice of a DoE press release of August 16, 2022. See <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>. We again take administrative notice of that press release, in which the Secretary of Education is quoted as saying:

It is time for student borrowers to stop shouldering the burden from ITT’s years of lies and false promises[.] . . . The evidence shows that for years, ITT’s leaders intentionally misled students about the quality of their programs in order to profit off federal student loan programs with no regard for the hardship this would cause. [Appeal Board Exhibit 1.]

The Judge’s decision is remanded so that he may determine the impact of DOE’s action and the rationale for said action on Applicant’s student loans, which make up most of the alleged debt.

In his appeal brief, Applicant provides new evidence, including a DoE document indicating that his student loan balance was \$32,238 as of January 2, 2023, and that those loans are in forbearance. Applicant also presents new evidence regarding other alleged debts.

In his reply brief, Department Counsel argues that the discharge, non-collectability, or unenforceability of a debt does not necessarily eliminate “concerns over an applicant’s poor judgment as evidenced by the manner in which an applicant accumulated and addressed [the] debt.” Reply Brief at 5. We do not find that argument convincing given the reasons why the ITT student loans were discharged. In the present case, the application of Mitigating Condition 20(b), which addresses “clear victimization by predatory lending practices,” Mitigating Condition 20(e), which addresses “a reasonable basis to dispute the legitimacy of the past-due debt[,]” as well as other mitigating conditions merit further examination in light of DoE’s action. See Directive, Encl. 2, App. A ¶¶ 20(a)–20(e).

Based on the foregoing, we remand this case to the Judge for further processing consistent with the Directive. The Judge may reopen the record to receive additional evidence from the parties. On remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board

retains no continuing jurisdiction over a remanded decision. However, a Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28. and E3.1.30.

**Order**

The decision is **REMANDED**.

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

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

Signed: Allison Marie  
Allison Marie  
Administrative Judge  
Member, Appeal Board