



**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: April 6, 2023

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In the matter of:)	
)	
-----)	ISCR Case No. 21-02722
)	
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 February 18, 2022, 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 hearing. On February 14, 2023, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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 eight delinquent Department of Education (DoE) student loans totaling about \$24,000, two medical debts totaling about \$970, and two other debts totaling about \$4,400. The Judge found in favor of Applicant on the medical debts and against her

on the other allegations. For reason stated below, we remand the Judge’s decision for corrective action.

Applicant’s student loan debt resulted from her attendance at two institutions. Tr. at 24-39. She began attending College A in 2009 but stopped after her first semester for personal reasons. Tr. at 25. Several years later, she began attending College B, but was again unable to complete her degree. Tr. at 25-26. In or around January 2020, she applied for a program to wipe away her student loan debt resulting from her attendance at College B (SOR ¶¶ 1.a, 1.d-1.f, 1.h, 1.i). Tr. at 34, 38; Government Exhibit 5. Applicant testified that she did not apply for discharge of the loans associated with her attendance at College A (SOR ¶¶ 1.c and 1.g.) and that she planned to enter a repayment plan for those accounts. Tr. at 32-34.

Post-hearing, Applicant offered into evidence two documents that were cumulatively marked as Applicant’s Exhibit A. The first document is an excerpt from a DoE Loan Rehabilitation application dated October 11, 2022. Applicant Exhibit A at 1-2. The second document includes an August 18, 2022, notice from DoE informing Applicant that her class action lawsuit related to her student loan discharge application was pending a proposed settlement. Applicant Exhibit A at 3-10.

The Judge found that Applicant submitted a loan rehabilitation request, noted she attended one of the schools more than a decade ago, and described her action as “too little, too late.” Decision at 2. The Judge appears to have inadvertently overlooked the second document included in Exhibit A regarding Applicant’s inclusion in the class action lawsuit pending settlement, and therefore failed to consider the impact of that action, if any, on some portion of Applicant’s student loan debts.

On November 16, 2022, a Federal court approved a settlement in the class action lawsuit, which affects the processing of borrower defense applications filed on or before November 15, 2022, and identifies borrowers whose applications for borrower defense discharges were pending as of June 22, 2022, as “Class Members.” See <https://studentaid.gov/announcements-events/sweet-settlement>. Appeal Exhibit 1. For members of that class action lawsuit, the DOE press release indicates that Federal student loans associated with the member’s attendance at the listed schools will be discharged, DoE will refund amounts paid on those loans, and credit tradelines for those loans will be deleted from the member’s credit report. In ISCR Case No. 21-01688 (App. Bd. Jan. 30, 2023), the Appeal Board took administrative notice of a DoE press release addressing the discharge of student loans and remanded the Judge’s decision so that he could consider the impact of DoE’s action on the alleged debts. See also ISCR Case No. 20-03688 (App. Bd. Mar. 2, 2023), a remand involving this same type of issue. We take that same action here.

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