



**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: December 6, 2023

In the matter of:)	
)	
-----)	ISCR Case No. 22-02042
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 4, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 4, 2023, after the record closed, Defense Office of Hearings and Appeals Administrative Judge Benjamin R. Dorsey denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had 18 delinquent Federal student loans and a delinquent tuition account, all in collections, totaling about \$71,000. In responding to the SOR, Applicant denied the allegations. The Judge found against Applicant on all of the allegations.

The Judge’s decision notes that Applicant is in his mid-forties and has worked for a Government contractor, on and off, since December 2018. He was married in 2007 and divorced in 2016. He shares custody of his teenaged child. He honorably served in the U.S. military from

1999 to 2007 and earned a bachelor's degree in 2015. Applicant received Federal student loans beginning in about 2011 to finance his on-line college program. Applicant claimed that his ex-spouse submitted a packet of documents that included an application for the loans. He said he did not look closely at the packet and cannot recall details, including the amounts borrowed. He said his ex-wife led him to believe they were borrowing money to pay for Christmas presents and to upgrade his gaming personal computer. He acknowledged that when he signed the loan packet, he knew he was applying for a student loan and may have authorized the full student loan and tuition balance alleged in the SOR. Decision at 2.

Applicant suspects his ex-wife opened additional federal student loans in his name without his knowledge or consent, but he did not provide corroborating evidence. He claimed that he first became aware of the full extent of his student loan and tuition indebtedness in about July 2015 when he happened to look at his account information online. He and his wife were expecting to qualify for Veterans Affairs disability benefits that would eliminate their Federal student debts. After they divorced in 2016, the previously deferred loans became delinquent, and he was notified of late payments. He took no action to address his debts until about February 2020. He did not dispute the debts with the Department of Education, loan servicer, or credit reporting agencies, nor did he accuse his ex-wife of fraud or take civil action against her. Decision at 2-3.

In February 2020, he contacted the loan servicer and arranged to automatically pay \$5 per month. He made two payments before all Federal student loans were placed into a national deferment status during the COVID-19 pandemic by President Biden. The Judge found that the student loans were delinquent before the COVID-19 deferment began. As of the date of the hearing, Applicant had not contacted DOE or the loan servicer to determine the status of his debts or the amount of the expected monthly payments and had not made any payments until after the hearing despite the end of the deferment period. Applicant's 2021 and 2022 credit reports support the debts, but a 2023 credit report lists the loans as "paid as agreed" and elsewhere as past due. Applicant is unaware of why the accounts are listed as "pays as agreed." The credit report also shows Applicant is behind on his mortgage and auto loan and took out a loan for \$6,000 in 2022 to go on vacation. Decision at 3.

The Judge found that Applicant's failure to address his debts was partially caused by his own inaction and partly by a divorce, unemployment, and underemployment. He was in default beginning in 2016 until March 2020 when they were deferred because of the pandemic. Decision at 4. Although the loans were no longer considered delinquent as a result of the pandemic deferment, the Judge held that the deferment action does not excuse the previously delinquent accounts. Applicant did not dispute the debts or take action to resolve the debts while in default. Although one portion of his 2023 credit report shows the accounts as no longer delinquent, this change does not reflect a positive resolution of the accounts, and Applicant was unaware that they were no longer listed in collections. Decision at 6-7.

Applicant's appeal brief does not assert that the Judge committed any harmful error, nor does he dispute the Judge's findings or conclusions. Rather, he merely re-argues his claim that his ex-wife took out the loans without his knowledge or consent, his work with a collection agent in

2020 to rehabilitate his debts, his payments since the deferment period ended, his military service, and good financial record to support reconsideration of his clearance eligibility. Appeal Brief at 1-2. Applicant admits that he “did not want to take responsibility for the student loans after I learned of the full amount due. I felt as though I had been wronged. In retrospect, I should have made the payments that were due – and I should have taken legal action against my wife.” *Id.* at 1.

Applicant’s argument amounts to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to demonstrate that he weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). With regard to past delinquencies, the Judge correctly cites to Appeal Board precedence noting that “a security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant’s reliability, trustworthiness, and ability to protect classified information.” Decision at 6 (citing ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015)).

While Applicant’s student loans were no longer considered delinquent as of March 2020 because of the COVID-19 deferment, we have upheld a finding that “it does not excuse Applicant’s past inactions in the context of security clearance eligibility.” *See, e.g.*, ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021). As contrasted with our decision in ISCR Case No. 21-01284 (App. Bd. Nov. 8, 2022), the Government here established that Applicant’s 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; ISCR Case No. 20-03208 at 2 (App. Bd. Jul. 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).

We note that Applicant attended an institution in which the Department of Education has approved a Federal student loan forgiveness program due to deception found regarding job placement claims. Eligible borrowers must apply for forgiveness of qualifying loans. *See www.ftc.gov/enforcement/refunds/devry-refunds* (Feb. 2022). In this case, there was no evidence presented to show that Applicant was aware of the program, was a victim of such deceptive practices, applied for or was qualified for loan forgiveness. Rather, the evidence shows that the student loans were used largely for personal expenses and that he displayed irresponsibility in other financial matters. Despite the possible availability of the student loan forgiveness program, Applicant is responsible for using due diligence to inquire into such programs and act to responsibly address his debts. He did neither in this case.

The Appeal Board does not review cases *de novo*. The Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Directive ¶ E3.1.32. Because Applicant has not alleged such a harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board