

KEYWORD: Guideline F

DIGEST: Applicant contends the Judge did not provide her an opportunity to testify about mitigating conditions and other factors. The record reflects that Applicant had ample opportunity to present her side of the case. In light of the record as a whole, Applicant has not met her “heavy burden of persuasion” to establish that she was denied due process rights under the Directive. Adverse decision affirmed.

CASE NO: 15-03798.a1

DATE: 04/05/2017

DATE: April 5, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-03798
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**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 November 10, 2015, 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 January 13, 2017, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28

and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding the evidence raised security concerns; whether the Judge erred in limiting Applicant's testimony; whether the Judge erred in her whole-person analysis; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

Applicant is a 47-year-old employee of a Federal contractor. She attributed her financial problems to underemployment. In 2010, she purchased a new vehicle and has one more payment to satisfy that loan. She estimated that she has about \$100 remaining at the end of the month after paying her bills. She has about \$400 in her checking and savings accounts. She does not have a budget and has not received financial counseling.

The SOR alleged six delinquent debts. In responding to the SOR, Applicant admitted four debts, including two student loans, and denied the remaining two debts. In the formal findings, the Judge found in favor of Applicant on four of the debts and against her on the two student loans.

Applicant obtained Federal and private student loans to attend college from 1990 to 1993, but did not earn a degree. The loans were deferred for an unknown period. Applicant testified that she did not make any payments on the loans from 1994 to 1996. The loans were sold to other lenders. She testified that she made inconsistent payments until about 2008 and then stopped paying them. It is unknown when or if she restarted the payments. No documentation was submitted verifying the periods of deferment or payments made during these periods.

Applicant testified that at some point her wages were garnished for about four or five years to pay her student loans. The garnishment stopped and restarted when the loans were sold. She also believed that she had about \$14,000 of her tax refunds withheld over the years. She told an investigator that she had the ability to pay her loans and would follow up to do so, but then testified that she could not afford to make the loan payments. The amount paid through garnishment is unknown.

In 2016, one of the student loan creditors advised Applicant to participate in an automatic repayment rehabilitation program. She thought the loans were being paid through garnishment. She did not provide documentation to verify her current balance. She entered into the rehabilitation program and pays \$5 a month. After she completes the payments for nine consecutive months, the loans will come out of default status and a monthly payment arrangement will be made. She provided a letter from the student loan creditor indicating her request to stop the garnishment was being processed. No additional information was provided. She testified the alleged student loans for about \$18,000 and about \$11,000 remained delinquent, but are being rehabilitated.

### **The Judge's Analysis**

The Judge found that disqualifying conditions 19(a) "inability or unwillingness to satisfy

debts” and 19(c) “history of not meeting financial obligations” applied. After receiving the SOR, Applicant began a student loan rehabilitation program. When that program is completed, a new monthly payment will be determined. She does not have a realistic plan for managing her student loans payments once a monthly payment plan is implemented. Her student loans are not resolved. She does not have a solid understanding of the specifics of her student loans. She does not have a reliable track record of acting responsibly toward resolving her student loans. Her actions to resolve them were not timely and cast doubt on her reliability, trustworthiness, and good judgment. At this juncture, it is too early to conclude that her financial problems are under control.

## Discussion

Applicant contends Department Counsel did not present any evidence that would raise a security concern sufficient to warranted her unfavorable clearance decision. While the Government bears the burden of producing evidence regarding allegations that are controverted (Directive ¶ E3.1.14), Applicant relieved the Government of that burden by admitting the two delinquent student loans in her SOR response.<sup>1</sup> Moreover, the Directive presumes there is a nexus or rational connection between proven or admitted circumstances under any of its guidelines and an applicant’s security eligibility. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). Direct or objective evidence of nexus is not required. *See, e.g.*, ISCR Case No. 12-00084 at 3 (App. Bd. May 22, 2014). In this case, the record evidence supports the Judge’s determination that disqualifying conditions 19(a) and 19(c) apply.

In support of her appeal, Applicant cites to Hearing Office decisions that she argues support her request for a favorable determination. The Board gives due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

Applicant also contends the Judge did not allow her an opportunity to testify about mitigating conditions and other factors. In making this argument, she points to places in the transcript at which the Judge interrupted her testimony to ask her questions. We have examined the 96-page transcript of the almost two-hour hearing, paying particular attention to those portions that Applicant identified as exhibiting this alleged tendency by the Judge. These instances appear to be reasonable efforts by the Judge to clarify Applicant’s testimony rather than to preclude a full and fair presentation of the evidence. We note that the Judge acknowledged at the hearing that she interrupted Applicant on occasion and then gave Applicant opportunities to provide further testimony until Applicant indicated she had nothing further to present. Tr. at 90-91.<sup>2</sup> The record reflects that Applicant had ample opportunity to present her side of the case. In light of the record as a whole, Applicant has not met her “heavy burden of persuasion” to establish that she was denied due process rights under the Directive. *See* ISCR Case No. 05-11641 at 2-3 (App. Bd. Jul. 31, 2007).

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<sup>1</sup> Credit reports admitted into evidence also provide substantial evidence of the delinquent student loans. Government Exhibits 3-5.

<sup>2</sup> After Applicant presented her closing argument, the Judge also asked Applicant if she had anything else to present, and Applicant responded, “No. That’s it.” Tr. at 95.

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. In these arguments, she cites to evidence favorable to her case such as her participation in the student loan rehabilitation program and the upcoming completion of her car loan payments that will result in an increase of her discretionary income. The Judge made findings about most of the matters that Applicant cites. It is well established that a party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). In the present case, Applicant failed to establish that the Judge mis-weighed the record evidence. Furthermore, we find no reason to conclude that the Judge's application of the mitigating conditions or whole-person factors was in error.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). See also Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

### Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

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