

KEYWORD: Guideline E; Guideline F

DIGEST: Although the Judge erred in some of her findings of fact, those errors were harmless because they likely had no affect on the outcome of the case. We note that Applicant’s student loans represent the main security concerns upon which the Judge based her unfavorable decision. He has not challenged any of the Judge’s findings regarding his student loans. Adverse decision affirmed.

CASENO: 16-01329.a1

DATE: 04/11/2018

DATE: April 11, 2018

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In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Phoenix S. Ayotte, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 29, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. At the hearing, the Government withdrew the sole Guideline E allegation. On December 12, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant is a 34-year-old employee of a defense contractor. The SOR alleged that he had 17 delinquent debts totaling about \$48,000. The Judge found against Applicant on seven student loans totaling about \$41,000 and two consumer collection accounts.<sup>1</sup> She found in favor of him on the remaining allegations.

Applicant experienced some short unemployment in 2011. He also attributed his financial problems to poor money management. He stated that his student loans were in deferment, but did not submit any documentation confirming that status. He provided a default notice for the student loans from 2015 and a bank statement showing one \$75 payment toward them. He was offered an opportunity to present further information about the student loans in a post-hearing submission, but did not submit any information. He stated that he was in the process of trying to resolve them.

Applicant had a debt consolidation plan for five accounts totaling about \$4,000 and made payments under that plan in 2015, but it is not clear whether the accounts in that plan are the same as those in the SOR. He also obtained the services of a law firm that represents consumers. He made payments to the firm, but it is not clear which accounts the firm was trying to resolve. He did not present a budget or state he received financial counseling.

Applicant has a history of financial problems, which are ongoing. “He reported some unemployment, but was not proactive with resolving debts or student loans. He did not provide documentation about his student [loan] deferments after the hearing. He has not provided sufficient evidence that he has acted responsibly in rectifying his financial situation.” Decision at 6.

### **Discussion**

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<sup>1</sup> The two consumer collection accounts totaled less than \$900.

Applicant challenges some of the Judge’s findings of fact. When a Judge’s finding are challenged, we examine them to see if they are supported by substantial evidence, *i.e.*, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015) and ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant contends that the Judge erred in making the following findings of fact:

a. That Applicant paid \$1,071 to resolve a charged-off account for a repossessed vehicle.<sup>2</sup> In challenging this finding, Applicant cites to Applicant’s Exhibit (AX) B that shows he made three payments of over \$1,000 to resolve the debt. While the Judge found in favor of Applicant on the allegation pertaining to this debt, Applicant is essentially arguing the Judge’s erroneous finding understates his efforts to resolve his debts.

b. That Applicant did not present evidence of financial counseling. In challenging this finding, Applicant cites to his testimony regarding the financial “guidance” he received from the law firm that represents consumers. Tr. at 64-65.

c. That Applicant was not proactive about debt resolution and had only recently addressed that issue. This assignment of error involves two separate challenges. The first challenge involves a sentence, fully quoted above, that also states Applicant was not proactive in resolving his student loans. We note this sentence is not a finding of fact, but is a conclusion based upon the Judge’s analysis of the evidence. The second challenge pertains to two sentences in the decision, which state: “Applicant has recently paid smaller debts and settled some accounts. He appears to have done so after the issuance of the SOR.” Decision at 6. In these sentences, the Judge is referring to Applicant’s actions taken on certain debts and not to his overall mitigative efforts as he implies in the appeal brief. In this regard, we note that the Judge found that Applicant made payments on his debts as far back as 2015, which was well before the issuance of the SOR.

d. That the Judge erroneously found against Applicant on the two consumer collection accounts. Applicant contends that he provided documents in his post-hearing submission that these debts were resolved. A letter from a creditor in his post-hearing submission reflects that one of those accounts was settled for less than the full balance in April 2017. AX E. As for the other account, Applicant claims he settled that debt with a \$355 payment to a third party reflected on his bank statement, but there is no documentation linking that payment to the alleged debt.

Although the Judge erred in some of her findings of fact, those errors were harmless because they likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). We note that Applicant’s student loans represent the main security concerns

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<sup>2</sup> The Judge in the decision and Applicant’s Counsel in the appeal brief refer to an incorrect amount. AX B shows Applicant made three payments of \$1,017.80.

upon which the Judge based her unfavorable decision. He has not challenged any of the Judge's findings regarding his student loans.

Applicant also contends the Judge erred in her formal findings when she found against him on Paragraph 1 of the SOR, which quotes the "*The Concern*" paragraph in Guideline F.<sup>3</sup> He argues that paragraph addresses matters – such as gambling, mental health conditions, substance abuse, and illegal activity – that do not apply in his case. We note, however, that it is longstanding agency practice for a Judge to find against an applicant either on *The Concern* paragraph or the guideline as a whole whenever he or she makes an unfavorable formal finding to any of that guideline's subparagraphs listing specific security concerns. In this case, the Judge did not err in finding against Applicant on Paragraph 1 of the SOR because it also states in part that "failure to . . . satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."

The balance of Applicant's arguments amount to either a claim that the Judge did not consider record evidence or a disagreement with the Judge's weighing of the evidence. These arguments, however, are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to the law. *See, e.g.*, ISCR Case No. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

The Judge examined the relevant evidence 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, Encl. 2, App A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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<sup>3</sup> *See*, Directive, Encl. 2, App. A ¶ 18.

**Order**

The Decision is **AFFIRMED**.

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

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board

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