

KEYWORD: Guideline E; Guideline F

DIGEST: The fact a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports merely due to the passage of time. Having admitted the alleged student loans in his SOR Response, Applicant had the burden to present evidence to rebut, explain, extenuate, or mitigate the security concerns arising from those debts and had the ultimate burden of persuasion for obtaining a favorable clearance decision. Directive ¶ E3.1.15. We find no reason to disturb the Judge’s determination that Applicant failed to meet that burden. Adverse decision affirmed.

CASENO: 16-03103.a1

DATE: 06/21/2018

DATE: June 21, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-03103
)	
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 November 16, 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 decision on the written record. On March 1, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline E have not been raised as an issue on appeal and are not further addressed below. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact and Analysis

The SOR alleges that Applicant has 14 delinquent student loans totaling about \$65,000. He admits responsibility for these accounts that arose during his college and post-graduate education.

In his SOR Response, Applicant noted that a number of the credit report entries in question were from financial agencies that held the student loans in the past and no longer represent active or open accounts. He also stated, “I have been in contact with all of the current account holders and am in the process of setting up payment/payoffs for all of them in order to bring all accounts current.” Decision at 2, citing SOR Response.

In his Response to Department Counsel’s File of Relevant Material (FORM), Applicant reported that he settled all of his student loans. He provided proof of payment of two student loans, one for about \$3,900 and the other for about \$2,800. The Judge found in his favor on those two student loans. In his FORM Response, Applicant provided an excerpt of a credit report (pages from Item 8 in the FORM), but his intent for submitting that excerpt without an explanation is less than obvious. The excerpt shows that two student loans continue to have outstanding balances. “Otherwise, the remaining entries in the credit report, without additional narrative description, fail to link to any of the other accounts set forth in the SOR.” Decision at 3.

Applicant’s claim that his student loans are settled cannot be substantiated based on the credit report that he submitted. He receives partial credit for resolving two of the alleged student loans.

Discussion

In his appeal brief, Applicant presented a credit report that post-dates the Judge’s decision. This credit report constitutes new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

Applicant also contends that the Judge erred in concluding “that I did not adequately show payment of roughly \$64,000 of student loans, and that I had not shown sufficient diligence in handling my finances.” Appeal Brief at 1. We do not find Applicant’s argument persuasive. First, we note the excerpt of the credit report he provided with his FORM Response contains a handwritten note that appears to indicate a payment was made on a student loan. In the decision, the Judge discussed the handwritten note, stating “no documentary evidence of the payment was included.” Decision at 3, n.3. *See, e.g.*, ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016) for the proposition that it is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts. We find no error in the Judge giving no weight to the handwritten note. Second, besides the payments towards the two student loans that the Judge found in Applicant’s favor, the excerpt also reflects three other payments towards student loans totaling about \$10,700. In his decision, the Judge does not discuss those three payments. From our review of the record evidence, particularly the partial account numbers for the student loans involved and the amount of each of those payments, it is likely those payments were made towards and resolved three of the alleged student loans. While the Judge may have erred in failing to discuss those three payments, such an error was harmless because it 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). In this regard, we note that Applicant failed to provide proof of resolution for more than half of his alleged student loans, including one for over \$14,000, another for over \$9,000, and two for over \$6,000.

To the extent that Applicant is arguing that the absence of the student loans from subsequent credit reports shows their resolution, we do not find that argument persuasive. The fact a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. *See, e.g.*, ISCR Case No. 14-03612 at 3 (Aug. 25, 2015). Debts may fall off credit reports merely due to the passage of time. *See, e.g.*, ISCR Case No. 03-20327 at 6 (App. Bd. Oct. 26, 2006). Having admitted the alleged student loans in his SOR Response, Applicant had the burden to present evidence to rebut, explain, extenuate, or mitigate the security concerns arising from those debts and had the ultimate burden of persuasion for obtaining a favorable clearance decision. Directive ¶ E3.1.15. We find no reason to disturb the Judge’s determination that Applicant failed to meet that burden.

Applicant’s appeal brief fails to establish the Judge committed any harmful error. 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.”

Order

The Decision is **AFFIRMED**.

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