

KEYWORD: Guideline F

DIGEST: Applicant further contends that his indebtedness is not an indicator of other security concerns, such as excessive gambling, mental health conditions, or substance abuse. To the extent that he is arguing that his financial problems do not create any security concerns, we note the Directive presumes a nexus or rational connection between proven conduct or circumstances under any of its guidelines and an applicant's security eligibility. Direct or objective evidence of nexus is not required. Adverse decision affirmed.

CASENO: 16-03319.a1

DATE: 07/30/2018

DATE: July 30, 2018

In Re: -----  Applicant for Security Clearance	) ) ) ) ) ) ) )	ISCR Case No. 16-03319
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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 December 5, 2016, 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 March 15, 2018, after considering the record, 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.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The SOR alleged four delinquent debts, two student loans and two bank-related debts. The Judge found in favor of Applicant on the two bank-related debts and against him on the two student loans. The bank-related debts are not raised as an issue on appeal. Consistent with the following, we affirm the Judge’s unfavorable decision.

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

Applicant, who is a 58-year-old, has been employed by a defense contractor since late 2014. In his response to the SOR, he admitted the two delinquent student loans totaling about \$79,000. The Judge found:

These student loans were incurred about 20 years ago, when Applicant attended college from 1994~1997. [Applicant] attributes this delinquency to periods of unemployment or underemployment from the time of his graduation until his current employment in 2014, and to a hospitalization in November of 2016. However, despite being gainfully employed since 2014, Applicant did not start to address his student loans until after receipt of the SOR. As of May 2017, Applicant paid \$1,878 towards the debt, \$1,569 of which were the result of “IRS Offset(s).” I do not find this to be a good-faith effort to address this substantial past-due indebtedness. These allegations are found against Applicant.<sup>1</sup>

In his analysis, the Judge noted that he considered each of the mitigating conditions under Guideline F. Given that Applicant’s student loans went unaddressed for about 20 years, he concluded that none of the mitigating conditions were established.

### **Discussion**

In the decision, the Judge noted that he left the record open until May 25, 2017, to provide Applicant an opportunity to submit additional matters, and such matters were submitted. In his appeal brief, Applicant submitted student loan documents (Exhibit DD) that are not included in the record and post-date the close of the record. These student loan documents constitute new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

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<sup>1</sup>Decision at 2 (citations to record evidence were omitted).

Applicant asserts that the Judge erred in making a finding about his age, he is 48 years old instead of 58, and indicates that this error was likely a “typo.” Appeal brief at 1. We agree that this is a harmless error because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-5184 at 3 (App. Bd. Jul. 25 2013).

In his appeal brief, Applicant contends the Judge erred in his analysis of the mitigating conditions. He argues the Judge did not properly consider his unemployment and underemployment, his health problems, and the termination of his nine-year domestic relationship. He also argues the Judge did not correctly evaluate his efforts to resolve other debts before addressing his student loans, his receipt of financial counseling, his positive contributions to the community, and his establishment of a repayment plan for the student loans. These arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

Applicant further contends that his indebtedness is not an indicator of other security concerns, such as excessive gambling, mental health conditions, or substance abuse. To the extent that he is arguing that his financial problems do not create any security concerns, we note the Directive presumes a nexus or rational connection between proven conduct or circumstances under any of its guidelines and an applicant’s security eligibility. Direct or objective evidence of nexus is not required. *See, e.g.*, ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018). Additionally, Applicant argues the judge should have granted him a security clearance on a probationary basis. Such argument fails to establish that the Judge committed any harmful error in not granting an exception under Appendix C of the Adjudicative Guidelines.<sup>2</sup>

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>2</sup>Directive, Encl. 2, App. C.

**Order**

The Decision is **AFFIRMED**.

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

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

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