

KEYWORD: Guideline F

DIGEST: The Board concludes the Judge’s material findings regarding the student loan are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant’s contention on appeal that the lender was not interested in working with him on the student loans as far back as 2014 is not supported by the record evidence. The Judge correctly found that Applicant stated in his SOR Answer and FORM Response that he was working with the lender to resolve the debt. His FORM Response indicated that he entered into a monthly repayment plan with the lender. It was only after the Judge asked Applicant to provide documentation of his continuing payments under that plan that he stated he was having difficulty in dealing with the lender. The Judge’s material findings of security concern are sustainable. Adverse decision affirmed.

CASENO: 16-03905.a1

DATE: 05/25/2018

DATE: May 25, 2018

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In Re:)	
)	
-----)	ISCR Case No. 16-03905
)	
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 January 7, 2017, 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 decision on the written record. On February 23, 2018, after considering the record, Administrative Judge Shari Dam 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. Consistent with the following, we affirm.

The Judge’s Findings of Fact

In 2010, Applicant obtained his current job after experiencing almost two years of unemployment. He divorced in 2012 and married again in 2016. He attributed his delinquent debts to his divorce, his ex-wife’s addiction, and her failure to pay her debts as provided in their marital settlement agreement.

The SOR alleged five delinquent debts totaling about \$100,000, including a student loan charged off for about \$60,000 in 2012. The Judge found against Applicant on the student loan debt and in favor of him on the other debts. In his Answer to the SOR in February 2017, Applicant stated he was working with an account representative on a plan to resolve the student loan and intended to use his tax refund to pay it. In responding to Department Counsel’s File of Relevant Material (FORM) in April 2017, he provided copies of three checks totaling \$800 that represented payments made over the phone. He was told he could settle the student loan for 33% but did not have money available to do so. He intended to continue to making payments.

In early 2018, Applicant responded to the Judge’s inquiry about whether he had additional documentation of payments on the student loan. Applicant stated the creditor would allow him to make payments on this charged-off debt, but would not provide him further information about the debt. Applicant stated that he contacted a student loan data system that could not located the debt, and he did not know what else to do. Absent further documentation, such as an IRS form confirming the student loan’s cancellation, it remains unresolved.

The Judge’s Analysis

Applicant’s divorce and related-financial difficulties were circumstances beyond his control. He did not present clear indications that the student loan is under control. He merits some, but not full, mitigation credit for good-faith efforts to resolve four debts because he did not begin to address them until after he received the SOR.

Discussion

In his appeal brief, Applicant submitted letters of reference that post-date the Judge’s decision. The Appeal Board is prohibited from considering such new evidence. Directive E3.1.29.

Additionally, we need not address Applicant's assignments of error regarding SOR allegations that the Judge found in his favor.

Applicant is apparently challenging the Judge's findings of fact regarding the student loan. In the appeal brief, he contends:

When finally able to pay on this [student loan] in 2014, I attempted to work with [the lender] to develop a repayment plan; however, the bank was not interested as they stated the loan had already been written off as a loss. In my correspondence for periodic review and subsequent submission, I made it clear the lender . . . would not accept a payment plan from me, nor would the bank representative(s) share account information with me, instead they reported they had no account information matching my loan. I found it impossible to manage and resolve this loan debt when the bank itself was not willing or interested in working with me to develop a reasonable re-payment plan. I request that further consideration be made regarding the reluctance of [the lender] to work with me to resolve my debt, and acknowledge my continued attempts to do so.¹

After reviewing the record, the Board concludes the Judge's material findings regarding the student loan are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant's contention on appeal that the lender was not interested in working with him on the student loans as far back as 2014 is not supported by the record evidence. The Judge correctly found that Applicant stated in his SOR Answer and FORM Response that he was working with the lender to resolve the debt. His FORM Response indicated that he entered into a monthly repayment plan with the lender. It was only after the Judge asked Applicant to provide documentation of his continuing payments under that plan that he stated he was having difficulty in dealing with the lender. The Judge's material findings of security concern are sustainable.

In his appeal brief, Applicant highlights his resolution of four of the delinquent debts, explains the reasons for his financial problems, and describes his efforts to resolve the student loan. These arguments amount to a disagreement with the Judge's weighing of the evidence and are insufficient 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. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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."

¹ Appeal Brief at 2.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael 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