

KEYWORD: Guideline E; Guideline F

DIGEST: A Judge evaluates an applicant's history of financial problems for what they may reveal about the applicant's ability to protect classified information. Financial problems may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Adverse decision affirmed.

CASENO: 17-01556.a1

DATE: 08/02/2018

DATE: August 2, 2018

In Re:	)	
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Applicant for Security Clearance	)	ISCR Case No. 17-01556

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Andrew P. Bakaj, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 1, 2017, 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. On May 1, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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. The Judge’s favorable findings under Guideline E have not been raised as an issue on appeal. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is 56 years old, married, and has four adult children. He earned an associate’s degree in 1993, bachelor’s degree in 2006, master’s degree in 2009, and technical certificate in 2011. He has worked for Federal contractors since 2003, and his latest employer since late 2015. His current annual salary is about \$125,000. He has held a security clearance since 2005.

The SOR alleged that Applicant had 18 delinquent student loans totaling about \$198,000. Fifteen of those are government loans that became delinquent in 2014 and, as of mid-2017, total about \$182,000. The remainder are private loans that totaled over \$93,000 in the fall of 2016. Applicant cosigned some of the loans for his son.

Applicant attributed his financial issues to a lack of money due to maintaining two households during the years he worked away from home and to short periods of unemployment between contracts. He acknowledged that, from 2005 to late 2016, he did not make payments on the student loans. After being contacted by the private lender, he began making monthly payments of \$500 on the three private loans in late 2016. He began making monthly payments of \$500 on the government loans in June 2017. At the time of the hearing, the loans were in a current status.

Applicant believed his student loans were in a deferred status until 2016. His 2015 and 2016 Federal tax refunds were withheld and applied to his student loans. He did not investigate the reasons for the withholding of those refunds. “Applicant admitted that he ‘put his head in the sand’ for many years, and essentially ignored them because he could not afford to pay them. (Tr. 68)” Decision at 3. Applicant’s supervisor testified that he is an outstanding employee and recommends him for a security clearance.

### **The Judge’s Analysis**

None of the Guideline F mitigating conditions apply. His financial problems have been ongoing since at least 2014. While some of his financial problems may have resulted from conditions beyond his control, “his decision to continue obtaining student loans for his advanced

education and his son's education, was within his control." Decision at 6. Insufficient evidence exists to establish he responsibly managed his student loans as they were accumulated or after they became due. "Although he recently established payment plans for the loans during this security clearance investigation, those actions do not constitute a good-faith effort to repay his loans, given his years of indifference and failure to address them prior to 2016." Decision at 6-7. He has not established a solid track record of responsibly resolving his student loans or managing his finances.

## **Discussion**

Applicant contends that the Judge erred in her mitigation analysis and, more specifically, that she did not consider specific mitigating facts. Citing to his and his wife's testimony, he argues that he timely addressed the delinquent student loans when he learned they were in arrears. He also disputes the Judge's conclusion that his decision to obtain student loans for his and his son's education was within his control, but instead he argues that he acted responsibly in obtaining the student loans to advance his and his son's career opportunities. He further argues that his efforts to obtain loan deferments should not be held against him. He claims his mitigation and whole-person evidence supports a favorable clearance decision.

A Judge evaluates an applicant's history of financial problems for what they may reveal about the applicant's ability to protect classified information. *See* Directive Encl. 2, App. A ¶ 18 for the proposition that financial problems may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Accordingly, a Judge can be expected to consider not only the extent to which an applicant's debts have been paid, settled, or forgiven but also the underlying circumstances, which may, in a given case, shed light upon an applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 15-02760 at 3 (App. Bd. Dec. 29, 2016).

Applicant has neither challenged any of the Judge's specific findings of fact nor rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). His arguments are, in essence, a disagreement with the Judge's weighing of the evidence. We note that the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has not identified any harmful error likely to change the outcome of the case. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. "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." The decision is sustainable on this record.

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. 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