



Applicant raised the following issues on appeal: whether the Judge denied him due process 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**

Applicant has worked for a Defense contractor for 28 years and has held a clearance for 30. He served in the military, leaving the service as a noncommissioned officer. He is married with three children.

In 2004, Applicant bought a house. After it had significantly increased in value, he withdrew equity and purchased three more as investment properties. The first and second mortgages on his residence were \$900,000 and \$200,000 respectively. Those for the three rental properties were \$1,200,000, \$600,000, and \$286,000. The value of the properties declined after a few years. In addition, the houses were financed with adjustable rate mortgages, and the payments doubled. Applicant withdrew funds from his retirement account in an effort to hold on to the properties, but all four went into foreclosure. Although he was a real estate agent, Applicant claimed that he did not realize how much the mortgage payments would increase.

In addition, both the IRS and state tax officials advised Applicant that he owed taxes due to debt forgiveness after the foreclosure sale. Applicant filed for Chapter 7 bankruptcy protection, which he believed discharged his tax debts. In fact, Applicant's Federal tax debt was resolved, but the state debt was not. At the close of the record, he owed his state over \$126,000 in past-due taxes, interest, and penalties. Prior to filing for bankruptcy, Applicant underwent financial counseling. Before his bankruptcy, Applicant purchased two vehicles, with a combined cost of nearly \$55,000.

In 2015, Applicant filed under Chapter 13 of the bankruptcy code to control payments on his taxes and on debts not discharged under Chapter 7. The documents that Applicant submitted do not show any funds allocated to his tax debt. In 2016, Applicant purchased a timeshare. In his financial statement, Applicant stated that his monthly income is \$8,300. In documents related to his Chapter 13 filing he stated that his and his wife's combined monthly incomes totaled over \$20,000. Applicant has about \$300,000 in his retirement account.

Applicant has received excellent performance evaluations. He has developed two patents for his employer.

### **The Judge's Analysis**

The Judge concluded that none of the mitigating conditions were entitled to full application. Although some events affecting Applicant's financial problems were beyond his control, such as the decline in the real estate market, the Judge found that other factors were due to Applicant's own choices. He stated that the debt load associated with the four properties evidenced a lack of judgment and that Applicant did not demonstrate that it was necessary for all four to go into foreclosure. He stated that the mere fact that the properties declined in value was not sufficient to show that foreclosure was necessary. He also cited to evidence that, despite being on notice of his tax debts, he made no payments despite having the financial ability to establish payment plans.

## Discussion

Applicant raises numerous assignments of error that appear to fall under the category of due process. For example, he claims that DoD officials improperly failed to submit enough interrogatories to him, thereby resulting in an incomplete record. He also claims that the SOR was insufficiently detailed. We have no authority to rule on the manner in which DoD officials perform their adjudication duties, although we note that Government Exhibit 3 consists of nearly 60 pages worth of interrogatories that Applicant had answered during the processing of his case. *See, e.g.*, ISCR Case No. 14-04186 at 3-4 (App. Bd. Oct. 28, 2015). An SOR is an example of notice pleading, and it does not have to allege every fact that might be relevant at a hearing. *See, e.g.*, ISCR Case No. 14-06440 at 3-4 (App. Bd. Jan. 8, 2016). In this case, the SOR was sufficient to place a reasonable person on notice of the concerns in Applicant's case.

Applicant contends that he was prejudiced by not having been represented by an attorney. He also claims that he was not able to know what kind of evidence he should provide in mitigation or understand his burden of persuasion. The record shows that Applicant received detailed notice of his rights. For example, he received Pre-hearing Guidance from the Chief Administrative Judge. This memorandum described the adversarial nature of the hearing, Applicant's right to hire an attorney at his own expense, his right to present evidence, etc. It notified Applicant of the procedures that would be followed during the course of the hearing, including his right to object to evidence and cross-examine witnesses. This guidance also described the procedures governing discovery between the parties. In addition, Applicant received a copy of the Directive, which also describes the rights and obligations of applicants at a DOHA proceeding, including the right to counsel and the burden of persuasion. Before taking evidence, the Judge explained the procedures that would be used during the course of the proceeding, and Applicant stated that he understood them. Tr. at 9-10. Applicant was provided with sufficient guidance as to his rights, and a review of the transcript discloses no reason to believe that he did not understand them.<sup>1</sup>

Applicant argues that Department Counsel engaged in some sort of misconduct, contending, among other things, that she did not comply with discovery procedures. There is nothing in the record to support this contention. The Judge questioned the parties about pre-hearing discovery, and Applicant agreed that Department Counsel had complied with DOHA requirements. Tr. at 11-12. Otherwise Applicant has failed to allege with specificity any misconduct that Department Counsel is supposed to have committed. *See, e.g.*, ISCR Case No. 15-03411 at 3 (App. Bd. Feb. 24, 2017) concerning a party's duty to frame appeal issues with sufficient specificity that reviewing authorities are able to address them. Our review of the transcript and the record as a whole discloses nothing

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<sup>1</sup>The Judge questioned Applicant in some detail about his decision to represent himself, concluding that Applicant possessed the requisite ability. Tr. at 5-9. We note evidence that Applicant has a associate's degree from college and that he is a real estate agent, both of which suggest that he is able to understand written material of an equivalent degree of complexity as that of the Directive.

improper about her conduct in the case.<sup>2</sup>

Applicant argues that the Judge erred by being a passive participant, contending that he should have assisted Applicant in presenting his case and should have sought additional mitigating evidence. However, a Judge has no authority to take sides in a case, conduct further investigation, etc. Applicant's argument amounts to nothing more than that the Judge acted as an impartial fact-finder, which was what the proper exercise of the Judge's duties required. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

Applicant contends that the Judge erred by permitting Department Counsel to ask leading questions and by not holding the record open after the hearing for the submission of additional evidence. There is nothing improper in the manner in which Department Counsel questioned Applicant.<sup>3</sup> Moreover, at the end of the hearing the Judge asked Applicant if he wanted an opportunity to present additional evidence, and he replied that he did not. Tr. at 51-52.

Though he may understandably be disappointed by the Judge's decision, we can find no reason to believe that Applicant was denied adequate notice as to his rights and obligations at the hearing. After considering the entirety of Applicant's due process arguments in light of the record as a whole, we conclude that he was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017). Having decided to represent himself during the hearing, Applicant cannot fairly complain about the quality of his self-representation or seek to be relieved of the consequences of his decision to represent himself. *See, e.g.*, ISCR Case No. 11-08118 at 2-3 (App. Bd. Aug. 12, 2013). Applicant requests that we remand the case for the purpose of taking in additional evidence. In doing so, he discusses matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. We have no authority to remand a case merely in order to supplement the record with additional evidence. *See, e.g.*, ISCR Case No. 15-02957 at 3-4 (App. Bd. Feb. 17, 2017).

Applicant's challenge to the Judge's decision is, in effect, a challenge to the Judge's weighing of the evidence. Among other things, he argues that the Judge did not address the extent to which Applicant had resolved his financial problems. However, the Judge's material findings are consistent with the record that was before him. These findings support his conclusion that Applicant's financial problems resulted for the most part from his own poor judgment and inattention to legal responsibilities such as addressing his tax delinquencies. A Judge is required to evaluate an applicant's financial problems for what they may reveal about the applicant's

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<sup>2</sup>We construe one of Applicant's arguments to be that Department Counsel improperly submitted as part of her case in chief documentary evidence that she had received from Applicant rather than from her own independent efforts. This assertion is new evidence, which we cannot consider. However, we fail to see how this argument on its face constitutes an allegation of error. There is nothing inadmissible about anything that Department Counsel submitted, and, in any event, Applicant did not object to Department Counsel's evidence. Tr. at 16.

<sup>3</sup>Applicant argues that Department Counsel's questions were deficient in that they elicited from him testimony that was not true. As stated above, we find nothing improper about the questions themselves. If Applicant understood the questions to be eliciting responses that were not accurate, it was his duty to notify the Judge. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014).

judgment and reliability, which are characteristics essential to protecting classified information. *See, e.g.*, ISCR Case No. 15-01737 at 3 (App. Bd. Feb. 14, 2017). We find no reason to conclude that the Judge’s analysis failed in this regard. Applicant has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08842 at 3 (App. Bd. Feb. 14, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision.<sup>4</sup> 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### Order

The Decision is **AFFIRMED**.

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, 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

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<sup>4</sup>As Applicant notes in his appeal brief, the Judge failed to enter a formal finding regarding an allegation about his Chapter 13 bankruptcy action. SOR ¶ 1d. This was an error, insofar as Judges are expected to make findings and conclusions regarding each allegation. Directive ¶ E3.1.25. However, even if he had entered a finding on this allegation that was favorable to Applicant, it would not have resulted in a different overall result, in light of his sustainable adverse findings discussed above. Therefore, this clerical error is harmless.