KEYWORD: Guideline F

DIGEST: Applicant asks for an opportunity to submit additional documentary evidence regarding debt resolution and the whole person factors. We construe her argument to be that she was not aware that she should present documentary evidence on these things. We cannot receive new evidence on appeal. Neither do we have authority to remand a case to the Judge simply to take in additional evidence. DOHA provided Applicant with adequate notice of her right to submit evidence. Applicant's failure to have provided evidence sufficient to mitigate the concerns raised in her SOR cannot fairly be attributed to the quality of guidance that DOHA provided her. To the extent that Applicant is contending that she was denied due process, we resolve this issue adversely to her. 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. Adverse decision affirmed.

CASENO: 17-04301.a1

DATE: 01/09/2019

DATE: January 9, 2019

In Re:	)	
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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 February 13, 2018, 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 decision on the written record. On October 11, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 and Analysis

Applicant is single, never married, and has one child. A high school graduate, she has taken some college courses. She has worked for a Federal contractor since August 2016.

The SOR alleged 45 delinquent accounts and a judgment against Applicant. Most of these were for medical expenses, several of which were under $25 and some were for as little as $1. During her clearance interview, Applicant stated that she had been the only wage earner in the household. It is not clear how many were in the household, although it included at least Applicant, her child, and a co-habitant. There is no evidence in the record regarding Applicant's current financial standing. She provided a written statement to the effect that she recently received a $25,000 pay increase. Applicant's Answer to the SOR stated that two debts had been paid. One of them, however, was included in a recent credit report as still being past due in the amount of $52. Applicant did not provide documentation to show any payments or payment plans for her delinquent debts.

The Judge concluded that Applicant's debts are recent and unresolved. He states that she provided insufficient evidence on the question of whether her problems are likely to recur. Applicant failed to demonstrate responsible action in regard to her debts, and she did not show resolution of the SOR debts except for one.[1] The Judge concluded that Applicant had not established a track record of financial stability.

Discussion

Applicant challenges some of the Judge's findings. She notes, for example, that she has two children rather than one. Item 3, Security Clearance Application, at 24-25. This error is harmless, in that the Judge would likely have arrived at the same ultimate conclusions even if he had not made the error. Applicant argues that she is paying on the account that the Judge found to be worth $52.

[1]The Judge also found in favor of Applicant on four accounts that were duplicated in the SOR.

The Judge's findings on this matter are consistent with the record that was before him. She argues that she has paid two debts and that the total of unresolved obligations is 43 rather than 45. However, the challenged finding merely refers to the number of allegations in the SOR, not the number that the Judge found to have been unresolved. The Judge's material findings are supported by substantial evidence. *See* ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018). Applicant has cited to no harmful error in the findings.

Applicant asks for an opportunity to submit additional documentary evidence regarding debt resolution and the whole person factors. We construe her argument to be that she was not aware that she should present documentary evidence on these things.[2] We cannot receive new evidence on appeal. Directive ¶ E3.1.29.[3] Neither do we have authority to remand a case to the Judge simply to take in additional evidence. *See, e.g.*, ISCR Case No. 15-05047 at 4 (App. Bd. Nov. 8, 2017). DOHA provided Applicant with adequate notice of her right to submit evidence. *See, e.g.*, File of Relevant Material at 3. Applicant's failure to have provided evidence sufficient to mitigate the concerns raised in her SOR cannot fairly be attributed to the quality of guidance that DOHA provided her. To the extent that Applicant is contending that she was denied due process, we resolve this issue adversely to her. 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. 17-02196 at 2-3 (App. Bd. Apr. 27, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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."

[2]Applicant quotes the Judge's comment that he was left with questions and doubts about Applicant's eligibility for a security clearance. Applicant states that there were no questions presented to her that would address these doubts. Appeal Brief at 1.

[3]Applicant's brief asserts things that are not found in the record and that, accordingly, we cannot consider.

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