

KEYWORD: Guideline F

DIGEST: Applicant states that without an attorney he was doomed to fail. He received the Directive as well as pre-hearing guidance both of which advised him of his right to seek counsel or other representative. He submitted evidence and testified in his own behalf. Department Counsel and the Judge asked him questions that elicited relevant and often favorable information and focused on the issues of the case. We cannot conclude that Applicant's decision to represent himself was due to inadequate advice as to his rights or that it impaired the due process afforded him by the Directive. Adverse decision affirmed.

CASENO: 14-01853.a1

DATE: 10/22/2015

DATE: October 22, 2015

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In Re:	)	
	)	
-----	)	ISCR Case No. 14-01853
	)	
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 August 22, 2014, 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 August 17, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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**

Applicant is a 58-year-old college graduate. Divorced with two grown children, he worked for the Federal Government from 1979 until 2007, when his employment was terminated. He challenged the termination up through a Circuit Court but was not successful. During his subsequent unemployment, he supported himself with his savings, unemployment benefits, financial assistance from family and friends, and with occasional contract work. He also earned income as a personal trainer. Despite all this, and despite his having moved to a different state to find work, he has been essentially unemployed since 2007.

Applicant’s SOR lists several delinquent debts, for judgments rendered against him as well as for collection accounts, delinquent mortgages, etc. Although the Judge resolved four of the debts in his favor, she reached the opposite conclusion for the remaining seven. She noted Applicant’s explanation that he has not had sufficient income since 2007, that he has slept in his car or on someone’s couch, and that he has had to use food stamps. In addition, he owns some real property but does not want to sell it. She also noted Applicant’s statement that he does not have enough money to file for bankruptcy.

### **The Judge’s Analysis**

The Judge acknowledged that Applicant had undergone circumstances that harmed his financial condition, principally his unemployment. However, she concluded that he had not shown responsible action in regard to his debts. She stated, for example, that he had chosen not to sell his property and use the proceeds to pay at least some of his debts and possibly achieve a greater degree of financial stability. She observed that Applicant had provided no evidence of financial counseling and concluded that there is insufficient evidence that his financial problems are under control. The Judge concluded that Applicant’s financial problems appear likely to continue and that he failed to mitigate the concerns arising therefrom.

### **Discussion**

Applicant states that he was not able to hire an attorney and, therefore, was “doomed to failure” in his effort to get a clearance. Appeal Brief at 1. Applicant received a copy of the Directive as well as pre-hearing guidance from the Chief Administrative Judge, both of which advised him of his right to seek counsel or other personal representative to assist him in presenting his case. At the hearing he submitted evidence and provided testimony in his own behalf. Moreover, both Department Counsel and the Judge herself asked questions of Applicant that elicited relevant and often favorable information and that focused his presentation on the material issues of the case. Applicant’s appeal brief does not cite to any other evidence that he could have provided that would likely have made a difference in his case but that he failed to submit due to his *pro se* status. We find no reason to conclude that Applicant’s decision to represent himself was due to inadequate advice as to his rights or that it impaired his receipt of the due process afforded by the Directive. To the extent that the phrase “doomed to failure” implies a concern that the Judge was biased against him, we note that Judges are presumed to be impartial and that an applicant who contends otherwise has a very heavy burden on appeal. Applicant has cited to no evidence that would rebut this presumption. *See, e.g.*, ISCR Case No. 14-03108 at 3 (App. Bd. May 20, 2015).

Applicant states that he would never do anything illicit in order to resolve this financial problems, nor does he have a problem with gambling, etc. We construe this as a challenge to the Judge’s conclusion that his circumstances raised security concerns. However, the concern under Guideline F is not simply that an applicant might be tempted to compromise classified information in order to pay his debts. The Directive also provides that financial problems can indicate poor self-control, lack of judgment, or other circumstances that raise questions about an applicant’s ability to protect classified information. Directive, Enclosure 2 ¶ 18. *See, also* ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015). Indeed, Directive, Enclosure 2 ¶ 19(c) explicitly states that a history of not meeting financial obligations is a disqualifying condition. The Judge did not err in concluding that Applicant’s lengthy history of financial delinquencies raised security concerns.

Applicant cites to his good security record, his loss of employment and consequent financial difficulties, and to other aspects of his case that he argues mitigate any concerns that may have arisen from his debts. The Judge made findings about Applicant’s circumstances, including findings about things that were favorable to him, and discussed them in her analysis. Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Neither are Applicant’s arguments sufficient 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. 14-05251 at 3-4 (App. Bd. Oct. 5, 2015). We note Applicant’s challenge to the Judge’s conclusion that his financial problems are likely to continue. However, despite this argument, we conclude that this was not an unfounded speculation but, to the contrary, a reasonable inference from the evidence.

Concerning Applicant’s citation to his good security record, the Government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable clearance decision. *See Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970). Even those with good prior records can encounter circumstances in

which their judgment and reliability might be compromised or called into question. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015).

Applicant states that, prior to his job loss, he was financially stable. He contends that the Judge’s focus upon the problems that arose after this job loss was unreasonable and contravened her duty to examine his concerns in a whole-person context. However, as we stated above, the Judge properly concluded that Applicant’s circumstances raised concerns under Guideline F. When the evidence produced by the Government raises security concerns, the applicant bears the burden of persuasion that he or she should have a clearance. Directive ¶ E3.1.15. *See also* ISCR Case No. 14-02806 at 3 (App. Bd. Sep. 9, 2015). While an earlier period of good financial health may be relevant, under the facts of this case the Judge did not err in concluding that the favorable evidence contained in the record was not enough to meet Applicant’s burden of persuasion. A whole-person analysis requires a Judge to consider the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-02806, *supra*, at 4. In this case, that evidence included Applicant’s substantial history of unresolved delinquent debts. We find no reason to disturb the Judge’s whole-person analysis.

The Judge examined the relevant data 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, 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: Michael Ra’anan  
Michael Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board