

DATE: February 8, 2007

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 03-25024

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 29, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Consideration) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive).⁽¹⁾ Applicant requested a hearing. On May 31, 2006, after the hearing, Administrative Judge Christopher Graham denied Applicant's request for a security clearance.⁽²⁾ Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether Applicant was denied due process because he did not adequately represent himself at the hearing.

After reviewing the record, the Board notes the following: (1) Applicant was sent Prehearing Guidance which notes in numbered paragraph 1 ". . . The Applicant has the option of appearing by himself or herself without an attorney, or being represented by an attorney selected and paid for by Applicant, or by being represented by a Personal Representative such as a friend, family member, or union representative. (2) It is well settled that an applicant's right to be represented by counsel (or personal representative) of his choice is not absolute and an applicant may waive it, for example, by failing to take reasonable steps to exercise it. *See* ISCR 98-0619 (App. Bd. Sep. 10, 1999). In this case, there is no indication that Applicant sought counsel or requested additional time to seek counsel. (3) Although the Judge did not ask Applicant if he was aware of his right obtain counsel and had chosen to represent himself, there was a preliminary discussion of the fact that the hearing was being held fewer than fifteen days after the Notice of Hearing, during which Applicant said "Yes, I'm prepared." The Judge then asked Applicant if he was waiving the 15 day notice rule and Applicant replied: "Yes, I am." Finally, the Board notes that Applicant did a creditable job representing himself at hearing, including successfully rebutting a Department Counsel objection to some of his evidence. (Transcript, pp. 26-27).

Applicant has failed to demonstrate harmful error. Thus, the Administrative Judge did not err in denying Applicant a clearance.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, 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

1. The SOR was amended at the hearing to add allegations under Guideline E (Personal Conduct).
2. The Judge found in favor of Applicant under Guideline F. That favorable finding is not at issue on appeal.