

DATE: September 1, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03864

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 29, 2005, DOHA issued a statement of reasons 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 the case be decided on the written record. On March 31, 2006, after considering the record, Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process of law; whether the Administrative Judge's adverse decision under Guideline F is arbitrary, capricious or contrary to law. [\(1\)](#)

Applicant argues that the Administrative Judge's adverse clearance decision under Guideline F should be reversed because the evidence submitted to the Judge by the government was incorrect and outdated. In support of that argument, she provides additional evidence in the form of statements and documentary evidence which indicates many of Applicant's debts have been settled, paid, or are being challenged. The Board does not find Applicant's argument persuasive.

The Board may not consider Applicant's new evidence on appeal. *See* Directive ¶ E3.1.29. And its submission does not demonstrate error on the part of the Administrative Judge. *See, e.g.*, ISCR Case No. 02-12789 at 3 (App. Bd. May 13, 2005).

A review of the record indicates Applicant was provided with the procedural rights set forth in Executive Order 10865 and the Directive. Applicant requested that her case be decided on the written record. She was provided with a copy of the government's file of relevant material (FORM), which contained the evidentiary exhibits that she now claims were incorrect or out of date. She was given an opportunity to object to those exhibits and provide her own evidence to rebut the governments allegations. Applicant failed to object to the exhibits in the government's FORM. Her response to the FORM contained only a single documentary exhibit related to the debt alleged in SOR subparagraph 1.e. The Administrative Judge found in Applicant's favor with respect to that subparagraph.

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. 00-0593 at 4 (App. Bd. May 14, 2001). If they fail to take timely, reasonable steps to protect their rights, that failure to act does not constitute a denial of their rights. *See, e.g.*, ISCR Case No. 02-19896 at 6 (App. Bd. Dec. 29, 2003). Because Applicant did not object to the government's exhibits or provide her own evidence with respect to the other debts at issue, she has no valid claim for denial of due process under the Directive or Executive Order.

The Administrative Judge's material findings with respect Applicant's circumstances of security concern reflect a reasonable interpretation of the record evidence. The Board does not review a case *de novo*. Considering the record evidence as a whole, the Judge's material findings of security concern are supported by substantial evidence and are sustainable.

Moreover, the Administrative Judge's conclusions reasonably flow from his findings. The Judge weighed the mitigating evidence offered by Applicant against the nature and seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions. The Judge found in favor of the Applicant with respect to some of the factual allegations. However, the Judge articulated a rational basis for not favorably applying any mitigating conditions to the remainder of the allegations. He reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline F is not arbitrary, capricious, or contrary to law.

Order

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

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant with respect to SOR paragraphs 1.e, 1.f, and 1.g. Those favorable findings are not at issue on appeal.