

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant's claim that his due process rights were compromised by his self-representation, the record demonstrates that Applicant received detailed pre-hearing guidance from DOHA explaining his rights and was advised of his right to employ counsel, or to have some other person represent him at the hearing; his right to present evidence and witnesses; his right to cross examine witnesses against him; and his right to object to evidence. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he had not been adequately advised of those rights.. Having decided to represent himself during the proceedings below, 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. Adverse decision affirmed.

CASENO: 07-09842.a1

DATE: 12/10/2008

DATE: December 10, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-09842
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT
Bruce B. Elfvin, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 12, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 31, 2008, after the hearing, Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant, who acted *pro se* at the hearing, was denied due process; whether the Judge erred in her application of the pertinent Guideline E mitigating conditions; and whether the Judge’s whole-person analysis was erroneous.¹ Finding no error, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a former Air Force member who is currently employed by a federal contractor. He “has a history of arrests, many of which involved alcohol.” Decision at 2. In 1981, 1985, 1987, and 1998 he was arrested and charged with Driving Under the Influence of Alcohol (DUI). In 1987, he was arrested and charged with failure to control his vehicle, following an automobile accident. Additionally, in 1998 he was arrested and charged with misdemeanor fraud for writing bad checks. In 1987 and again in 1997 Applicant received inpatient treatment for alcohol dependence. He has experienced financial problems, which have resulted, among other things, in vehicle repossessions, a garnishment for child support payments, and a discharge in Chapter 7 bankruptcy. In 1995, and again in 2007, Applicant filled out security clearance applications (SCA). Applicant did not provide truthful answers to questions concerning his criminal history, his alcohol dependence treatment, his bankruptcy, his wage garnishment, and his vehicle repossessions.

The Board has considered the issues which Applicant has raised on appeal. Concerning Applicant’s claim that his due process rights were compromised by his self-representation, the record demonstrates that Applicant received detailed pre-hearing guidance from DOHA explaining his rights. Among other things, he was advised of his right to employ counsel, or to have some other person represent him at the hearing; his right to present evidence and witnesses; his right to cross examine witnesses against him; and his right to object to evidence. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he had not been adequately advised of those rights. *See* Tr. at 4-6. “Having decided to represent himself during the proceedings below, Applicant cannot fairly complain about the quality of his self-

¹The Judge’s favorable findings under Guideline F and under paragraphs 2(f) and 2(g) of Guideline E are not at issue in this appeal.

representation or seek to be relieved of the consequences of his decision to represent himself.” ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004).

To the extent that the remaining issues include a challenge to the factual sufficiency of the Guideline E security concerns, the record demonstrates that the Judge’s conclusions were based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) The Judge reasonably explained her conclusion that Applicant’s answers to the questions at issue were deliberately false: *e.g.*, that the questions were clear in their meaning, that his testimony was evasive, and that he had made prior statements inconsistent with his claim of innocent mistake.² Decision at 12. Furthermore, the record demonstrates that the Judge considered appropriate mitigating conditions, holding in favor of Applicant as to the Guideline F security concerns and two of the factual allegations under Guideline E. However, she concluded that Applicant had failed to meet his burden of persuasion as to the remaining Guideline E allegations. *See* Directive ¶ E3.1.15. Viewed in light of the record as a whole, this conclusion is sustainable. The Judge’s whole-person analysis is also sustainable.³ *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also* *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 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). Accordingly, the Judge’s decision is neither arbitrary, capricious, nor contrary to law.

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

²*See, e.g.*, Government Exhibit 10, Statement of Subject, dated September 14, 1996, in which Applicant attributed false statements on the 1995 SCA to having been advised by an unnamed person “that the information wouldn’t be checked thoroughly.”

³*See, e.g.*, Decision at 13-14: “Despite several questions that sought adverse background information, he did not disclose any information about his criminal history, alcohol treatment, or financial problems. He excused his omissions by claiming all incidents fell outside a seven-year time period that he was told applied . . . [H]e maintained that position, despite specific questions that used the word “ever” and did not mention seven years as a cut-off period . . . His explanations for omitting information are neither credible nor persuasive . . . His explanations for his omissions are disingenuous and unbelievable. He knew or should have known (having gone through the same process ten years earlier) that the Government was seeking all adverse information in his history.”

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board