

KEYWORD: Guideline F

DIGEST: Applicant avers that Department Counsel made statements which could be viewed as advice that he did not need nota lawyer and he relied upon this in electing to appear pro se. The Board cannot consider new evidence. Still, the Board considered Applicant’s argument. Prior to the hearing, he received written guidance from DOHA that he had the right to employ counsel, or have another person represent him; that he had the right to present evidence and witnesses; that he had the right to cross-examine witnesses against him; and that he had the right to object to evidence. At the hearing, the Judge told him of his right to employ counsel. He said he decided to represent himself. He presented documentary evidence, called witnesses, and testified in his own behalf. He points to nothing which he would have done differently had he had counsel, or anything likely to have produced a different result. Under the facts of this case, there is no basis to conclude that Applicant was denied due process. Adverse decision affirmed.

CASENO: 08-07352.a1

DATE: 07/28/2009

DATE: July 28, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-07352
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT
Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 23, 2009, DOHA 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 May 14, 2009, after the hearing, Administrative Judge Paul J. Mason 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 Applicant was denied due process insofar as he represented himself. Finding no error, we affirm the decision of the Judge.

The Judge found that Applicant had numerous delinquent debts, mostly for credit card accounts.¹ Acknowledging that these debts may have been affected by Applicant’s former wife’s problems with drugs, the Judge nevertheless concluded that Applicant had not mitigated the security concerns which his financial problems raised. “[Applicant] acted irresponsibly . . . in not handling the past due debts in a prudent manner. His enrollment in [a] debt plan in early March 2009, and his payment of four small debts . . . four days after the hearing do not provide me with sufficient confidence to believe he is truly committed to paying the remaining debts.” Decision at 8-9.

Applicant offers new evidence in the form of a contention that, at some point prior to the hearing, Department Counsel made statements which could be construed as advice that he need not hire an attorney to represent him. He states that he relied upon this purported advice in electing to conduct his case *pro se* and that he was overwhelmed at the hearing. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. Nonetheless, the Board has considered Applicant’s argument, but only for the limited purpose of addressing Applicant’s due process claim. The record demonstrates that, prior to the hearing, he received written guidance from the Chief Administrative Judge that he had the right to employ counsel, or to have some other person represent him at the hearing; that he had the right to present evidence and witnesses; that he had the right to cross-examine witnesses against him; and that he had the right to object to evidence. At the beginning of the hearing, the Judge further advised him of his right to employ counsel. Applicant stated that he had given thought to doing so but had decided to represent himself. Tr. at 4. During the hearing, Applicant presented documentary evidence, called three witnesses, and testified in his own behalf. He points to nothing in the record which he likely would have done differently had he been represented by counsel, or anything likely to have produced a different result. Under the facts of this

¹The debts which the Judge found against Applicant total \$48,945.

case, there is no basis to conclude that Applicant was denied the due process afforded by the Directive. *See* ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

After reviewing the record, the Board concludes 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 decision that “it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 9. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”).

Order

The Judge’s adverse security clearance decision 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