

KEYWORD: Guideline F

DIGEST: Applicant's due process claims are unpersuasive. She was advised before the hearing and again at the hearing of her right to obtain counsel. She had three months from the time of her request for a hearing to gather documents. Adverse decision affirmed.

CASENO: 09-05390.a1

DATE: 10/22/2010

DATE: October 22, 2010

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In Re: )  
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----- ) ISCR Case No. 09-05390  
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Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 15, 2010, 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 August 10, 2010, after the hearing, Administrative Judge Noreen A. Lynch 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 security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. She has previously held a security clearance during the 1990s. A divorced mother of two, she supports herself and her children without child support from her former spouse.

Applicant has numerous delinquent debts, for such things as a repossessed vehicle, medical bills, and credit cards. None of her debts have been paid off, and she has no repayment plan for the accounts. Many of her debts originated due to her having moved briefly to another state, where the cost of living was higher than she had expected and the job she had moved there to take was not as remunerative as she had been promised. The Judge acknowledged that Applicant promised to repay her debts. However, the Judge’s analysis underscores Applicant’s failure to establish a track record of responsible action in regard to her debts. Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *See, e.g.*, ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

Applicant suggests that, prior to the hearing, she did not have time to obtain documentation to support her claims of debt repayment. She states that she had not understood the seriousness of her situation. To the extent that Applicant is contending that she was denied due process because of her self-representation, the record as a whole does not support that claim. Both prior to the hearing, and at the beginning of the hearing (Tr. at 5), Applicant was advised of her rights, including the right to obtain counsel. The Notice of Hearing was issued 27 days in advance of the event and almost three months after Applicant, in her response to the SOR, had requested an opportunity to have her case heard by a DOHA Judge. Additionally, Applicant testified that documentation regarding her debts had been lost or destroyed. Tr. at 14, 48. Therefore, there is no reason to believe that, if Applicant had asked for more time to prepare, she would have been able to obtain evidence in support of her case for mitigation. The record does not support a conclusion that Applicant was denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

Applicant’s appeal brief discusses evidence not contained in the record, such as the consequences of the Judge’s adverse decision. We cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board.”) *See also, e.g.*, ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009).

Applicant contends that the Judge should have concluded that the security concerns in this case had been mitigated. However, 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 adverse 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).

### **Order**

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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