KEYWORD: Guideline F

DIGEST: A Judge is under no obligation to hold the record open after a hearing especially if neither party requests it. Adverse decision affirmed.

CASENO: 12-07751.a1

DATE: 04/07/2015

DATE: April 7, 2015

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 25, 2014, DoD 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 January 15, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge was biased against Applicant; whether Applicant was denied his due process rights; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been employed by a Defense contractor since 2007. He was employed by a different contractor from 1999 to 2007.

In 2008, Applicant was the subject of a DOHA security clearance hearing based upon Guideline F considerations. After that hearing, the Judge granted Applicant a clearance, having found that he had paid or otherwise resolved the SOR debts. At that hearing, Applicant attributed his financial problems to a divorce and to unforeseen medical expenses. "The record is unclear whether any of the debts alleged in the current SOR were adjudicated at the 2008 hearing." Decision at 2. After receiving the SOR regarding his current application, Applicant sent ten letters to creditors. These letters admitted that Applicant owed the creditors money, though he disputed the amounts. They contained offers to settle the debts for less, unspecified amounts. Applicant did not corroborate statements in these letters that he had attempted previous communications with the creditors. The Judge noted that Applicant did not propose actual settlement amounts. This course of action produced little response.

Applicant enjoys a good reputation for honesty and trustworthiness. He has received no financial or credit counseling. He has over $2,000 in positive monthly cash flow. He promises to pay his debts, but he acknowledges that he has made such a promise before.

The Judge's Analysis

The Judge characterized Applicant's financial problems as "recent, not infrequent, and ongoing." *Id*. at 4. He stated that Applicant had provided no insight as to why his difficulties persisted long after his earlier adjudication. He noted that Applicant's efforts at resolving his debts were undertaken after he received Government interrogatories. He stated that more than half the SOR debts have simply aged off the credit reports. The Judge took note of Applicant's monthly income, which he concluded was enough to permit meaningful debt resolution, though Applicant's financial statement reflects no payments to any of his creditors.

Discussion

Applicant contends that the Judge was biased against him, citing to portions of the transcript which, he believes, show that the adverse result of his case was a foregone conclusion. A Judge is

presumed to be impartial. A party who alleges that a Judge is biased has "a heavy burden of persuasion" on appeal. *See, e.g.*, ISCR Case No. 11-01618 at 3 (App. Bd. Jan. 24, 2013). We have examined the entirety of the transcript, along with the other record evidence and the Decision. We find therein nothing that would persuade a reasonable person that the Judge lacked the requisite impartiality.

Applicant argues that he was denied due process. He states that he found out after the hearing that Judges can leave the record open for the presentation of additional evidence. He notes that the Judge did not advise him of this possibility. He also implies that his presentation of his case would have been better if he had been represented by counsel.

A Judge has the inherent discretion to hold the record open after a hearing for the submission of other evidence. However, a Judge is not under an obligation to do so, especially when neither party requests it. *See, e.g.*, ISCR Case No. 08-09808 at 3 (App. Bd. Sep. 21, 2009). In this case, Applicant said nothing during the hearing that would have led the Judge to believe that he had additional evidence to present. Neither did his Appeal Brief identify any such evidence. Regarding Applicant's self-representation, prior to the hearing, and again at the beginning, Applicant was advised of his right to employ counsel or a personal representative. The Judge questioned him about his ability to represent himself, and Applicant's answers and subsequent conduct of his case show that he was qualified to act *pro se.* Applicant was not denied the due process afforded by the Directive.

Applicant contends that it seems inconsistent to take his clearance but give him a chance at restoring it in a year's time. In doing so, he cites to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant's argument addresses policies set forth in Directive ¶ E3.1.37 *et seq.* concerning an unsuccessful applicant's right to reapply after a year from the initial unfavorable decision. We have no authority to rule on the wisdom of the provisions of the Directive. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012). In any event, the availability of a reapplication process does not call into question the Judge's adverse findings and conclusions in Applicant's case.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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