

KEYWORD: Guideline F

DIGEST: Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights. Failure to take timely, reasonable steps to protect their rights does not constitute a denial of those rights. Adverse decision affirmed.

CASENO: 14-06916.a1

DATE: 02/19/2016

DATE: February 19, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 14-06916
)	
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 15, 2015, DoD 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 Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On November 15, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether Applicant was afforded the procedural due process he was entitled to under the Directive. Consistent with the following, we affirm.

The Judge made the following findings: Applicant had nine delinquent consumer debts and one judgment debt totaling \$16,874. The record does not address whether Applicant obtained financial counseling. He offered no evidence showing a workable budget, from which his ability to resolve his admitted delinquencies and avoid additional debt problems could be predicted with any confidence. Applicant denied that he deliberately falsified his financial information by answering “No” in response to the questions about debt delinquencies on his 2014 security clearance application. He ascribed this falsification to his “oversight in checking the wrong block.” However, his submission of a document in 2014 to a creditor offering repayment options is not consistent with his assertion that he affirmatively denied the existence of his delinquent debts in 2014 through an innocent mistake.

The Judge concluded: The record does not establish mitigation of Applicant’s financial irresponsibility under any of the Guideline F mitigating provisions. Applicant’s attempt to justify his false denial of his delinquent debts on his security clearance application is not credible. He has not mitigated the Government’s security concerns.

Applicant does not assert error on the part of the Judge. He does state that he did not fully understand the consequences of not requesting a hearing. He states that he has now consulted legal counsel and believes that he can more fully and adequately present his case at a live and in-person hearing. The Board construes Applicant’s assertions as raising the question of whether he was denied certain procedural rights and information before making his choice to have his case decided on the written record. For the reasons that follow, Applicant has not established that his procedural due process rights were violated.

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. 07-15235 at 2 (App. Bd. Oct. 3, 2008). 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). The record reveals that upon his receipt of the SOR, Applicant was provided a form wherein the choice between a hearing and a determination on the written record was clearly indicated. In addition, he was provided a copy of the Directive, which describes

procedures both for hearings and for decisions on the written record. Ascertaining the merits for his situation of choosing one option over the other was the responsibility of Applicant. There is no evidence that Applicant was influenced in his choice by the Government or that he was hindered by the Government in any way from choosing freely between the available options. Thus, there is no evidence that Applicant's procedural due process rights were violated. Given this, there is no basis to grant Applicant the relief he seeks, namely that the Judge's decision be rescinded, and that he be allowed to present his case in an in-person hearing.

Order

The decision of the Judge 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