KEYWORD: Guideline F

DIGEST: Regarding Applicant's claim that he would have chosen a hearing if he had understood what would be presented to the Judge. Applicant received the FORM which consisted of a Department Counsel memo and accompanying evidence. Both the FORM and the cover letter clearly stated that the contents of the FORM would be presented to the Judge for his consideration and that Applicant could submit a response setting forth objections or anything else he wanted to present. There is no reason to believe that Applicant was mis-advised about the evidence the Judge would consider, nor that Applicant's choice of an administrative determination was other than knowing and intelligent. Although *pro se* applicants are not held to the standards of lawyers, they are expected to take reasonable steps to protect their rights. Adverse decision affirmed.

CASENO: 15-07237.a1

DATE: 02/12/2018

DATE: February 12, 2018

In Re:	)	
	)	
--------	)	ISCR Case No. 15-07237
	)	
	)	
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 September 29, 2016, 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 decision on the written record. On October 27, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant has worked for Defense contractors since 2005 and has held a clearance since 2007. He experienced unemployment from late 2009 to January 2010. Applicant's SOR listed numerous delinquent debts. The Judge resolved five of them against him–four credit card accounts and a medical bill. The credit card debts had been charged off. Applicant claimed that he may have paid off the medical bill, but he provided no corroboration. Applicant did not submit evidence of his current income or expenses. However, an IRS tax transcript showed that his income for 2009 was nearly $140,000 and for 2015 was over $182,000.

The Judge concluded that Applicant's debts are numerous and recent. Though noting that Applicant had hired a debt management company to assist him in resolving his financial problems, the Judge found no evidence that he received actual financial counseling. Applicant submitted no evidence of responsible conduct for the five debts described above. The Judge concluded that Applicant had not mitigated the concerns arising from these debts.

Discussion

Applicant argues that the Judge's findings of fact contain errors and that his Response to the SOR showed that he had addressed all of his debts. He asserts that, had he known that inaccurate information would be before the Judge, he would have requested a hearing.

We have examined the Judge's findings of fact in light of the record that was before him. The Judge resolved some of Applicant's debts in his favor, for example allegations that he failed to pay income tax for 2009 and 2012. The Judge's adverse findings are consistent with the record, in

particular Applicant's Response to the SOR and his clearance interview summary.[1] If Applicant believed that the SOR or other documents in the File of Relevant Material (FORM) contained errors, it was his responsibility to present corrective evidence. *See* Directive ¶ E3.1.7, which sets forth an applicant's responsibility for presenting objections, rebuttal, extenuation, mitigation or explanation to matters contained in the FORM. As it stands, the Judge's material findings of security concern are based upon substantial evidence or constitute reasonable inferences from the evidence. *See, e.g.*, ISCR Case No. 14-04724 at 3 (App. Bd. Aug. 18, 2017).

Regarding Applicant's claim that he would have chosen a hearing if he had understood the nature of what would be presented to the Judge, we note that Applicant received the FORM on December 8, 2016. The FORM consisted of a Department Counsel memo and accompanying evidence–the SOR and Applicant's Response thereto; the security clearance application; Applicant's interrogatory answers, which include an authenticated copy of Applicant's clearance interview; and a credit report. Both the FORM and the cover letter clearly stated that the contents of the FORM would be presented to the Judge for his consideration and that Applicant could submit a response setting forth objections or anything else he wanted to present. There is no reason to believe that Applicant was mis-advised about the evidence the Judge would consider, nor is there any reason to believe that Applicant's choice of an administrative determination was other than knowing and intelligent. Although *pro se* applicants are not held to the standards of lawyers, they are expected to take reasonable steps to protect their rights. *See, e.g.*, ISCR Case No. 15-05047 at 4 (App. Bd. Nov. 8, 2017). Applicant's brief includes a copy of the SOR Response. To the extent that Applicant is arguing that the Judge did not consider it, he has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

[1]Applicant's SOR Response notes that his credit card accounts have been charged off. That a creditor is no longer actively seeking payment or that a debt is not otherwise collectable does not establish that the debt has been resolved within the meaning of the Directive. *See, e.g.*, ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011).

Order

The Decision is **AFFIRMED**.

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

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

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