

KEYWORD: Guideline F

DIGEST: There is a rebuttable presumption that Federal officials and employees carry out their duties in good faith. DOHA proceeding are civil in nature and applicants are not entitled to the procedural protections afforded criminal defendants. Adverse decision affirmed.

CASENO: 06-24460.a1

DATE: 04/30/2008

DATE: April 30, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-24460
)	
Applicant for Security Clearance)	

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 June 14, 2007, 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 January 18, 2008, after the hearing, Administrative Judge Michael H. Leonard denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether Applicant was denied due process.

Applicant essentially contends he was denied due process. In that regard, he argues that Department Counsel led him to believe that an attorney would be present at the hearing to represent him. Applicant also argues that even though he elected to proceed on his own, he was somewhat intimidated by the situation and did not present as much mitigating evidence as he could have. Therefore, Applicant requests that the case be remanded for a new hearing. The Board does not find Applicant’s arguments persuasive.

There is a rebuttable presumption that federal officials and employees carry out their duties in good faith. *See, e.g.*, ISCR Case No. 00-0030 at 5 (App. Bd. Sep. 20, 2001). A party seeking to rebut that presumption has a heavy burden of persuasion on appeal. Applicant has not met that heavy burden. Applicant fails to identify anything in the record below that indicates or suggests a basis for a reasonable person to conclude that Department Counsel acted improperly, unfairly or unprofessionally. *See, e.g.* ISCR Case No. 05-04923 at 3, n. 4 (App. Bd. Apr. 24, 2007); ISCR Case No. 03-21329 at 2 (App. Bd. Sep. 25, 2006).

DOHA proceedings are civil in nature and applicants are not entitled to the procedural protections afforded to criminal defendants. *See, e.g.*, ISCR Case No. 02-12199 at 5-6 (App. Bd. Oct. 7, 2004). Therefore, claims of ineffective assistance of counsel are of no moment. *See, e.g.*, ISCR Case No. 02-17574 at 2 (App. Bd. Jul. 24, 2006). A review of the record indicates that Applicant was provided with the procedural rights set forth in Executive Order 10865 and the Directive, as well as prehearing guidance (which advised that Applicant could appear by himself, with an attorney he selected and paid for, or with a personal representative). At the beginning of the hearing, the Judge diligently inquired into Applicant’s understanding of his right to retain an attorney, and his willingness to represent himself at the hearing.¹ Based upon the representations he received from Applicant, the Judge reasonably concluded that Applicant was making a knowing and intelligent waiver of his right to counsel, and was ready and willing to proceed with the hearing. *See, e.g.*, ISCR Case No. 02-17574 at 2 (App. Bd. Jul. 24, 2006); *compare* ISCR Case No. 04-12732 at 8 (App. Bd. Nov. 2, 2006). During the hearing Applicant gave a coherent explanation about his

¹Judge: Very well. Sir, do you understand you have a right to be represented at your own expense? Applicant: Yes. Judge: Have you decided to represent yourself today? Applicant: Yes, sir. Judge: Are you ready to proceed with the hearing today? Applicant: Yes, sir. Judge: Now, before we started the hearing I was visiting with [Applicant] and he seemed to indicate that he thought perhaps an attorney might be appointed for him and I explained to him that was not the case and that perhaps he had confused the Government attorney he had been dealing with leading up to the case. So, with that explanation noted, [Applicant], it’s still your desire to represent yourself, today? Applicant: Yes sir, That’s fine. Transcript at 5-6.

situation, offered a documentary exhibit on his own behalf, answered questions appropriately, and did not otherwise impose any objections to the proceedings. 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. 00-0593 at 4 (App. Bd. May 14, 2001). If they fail to take such steps, 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, 2001). Because Applicant did not object to proceeding or otherwise request a continuance of his case, he was not denied due process under the Directive or Executive Order.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

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

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