

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant's claim that his due process rights were compromised by his self-representation is belied by the record, which establishes he received detailed pre-hearing guidance from DOHA explaining his rights. The fact that Applicant had over \$3,000 in income each month after expenses supported the Judge's conclusion that Applicant had not made reasonable efforts to satisfy his creditors. Adverse decision affirmed.

CASENO: 08-03110.a1

DATE: 01/27/2009

DATE: January 27, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-03110
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

George W. Gekas, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security

clearance. On June 18, 2008, DOHA 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 a hearing. On October 31, 2008, after the hearing, Administrative Judge Mary E. Henry denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s application of the Guideline F and E Mitigating Conditions was erroneous; whether the Judge’s whole-person analysis was erroneous; and whether Applicant was denied the due process rights secured him by the Directive. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a software developer and consultant for a Department of Defense contractor. After graduating from college in 1980 he worked for a state government, retiring from that job in 1993. Following retirement he set up his own business related to information technology. When he expanded his business activities, it did not generate enough revenue to pay operating expenses, in light of changes in the market. He used his personal income to pay employees, with a result that he was not able to pay his personal bills. His business ultimately failed. Applicant experienced financial troubles as well as tax problems. He and his wife divorced. They sold their house to pay off debts. Proceeds from this sale paid off Applicant’s tax liens. He now lives with his parents to save money. His income is such that he nets \$3,584 a month after expenses.

Applicant has numerous delinquent debts for credit cards, etc. The total amounts owed on those debts for which the Judge found against Applicant exceed \$18,000. Additionally, Applicant answered “no” on questions on his security clearance application which inquired about debts over 180 days delinquent and about any tax liens against him. These answers were not true.

The Board has considered the issues which Applicant has raised on appeal. Concerning Applicant’s claim that his due process rights were compromised by his self-representation, the record demonstrates that Applicant received detailed pre-hearing guidance from DOHA explaining his rights. Among other things, he was advised of his right to employ counsel, or to have some other person represent him at the hearing; his right to present evidence and witnesses; his right to cross-examine witnesses against him; and his right to object to evidence. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he had not been adequately advised of those rights. *See* Tr. at 4-8. “Having decided to represent himself during the proceedings below, Applicant cannot fairly complain about the quality of his self-representation or seek to be relieved of the consequences of his decision to represent himself.” ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004).

The record demonstrates that the Judge considered appropriate mitigating conditions, holding in favor of Applicant as to several of the Guideline F and Guideline E allegations. However, she concluded that Applicant had failed to meet his burden of persuasion as to the remaining allegations. *See* Directive ¶ E3.1.15. She paid attention to the fact that Applicant had over \$3,000 in income each month after expenses yet had not made reasonable efforts to satisfy his creditors. Viewed in

light of the record as a whole, the Judge's adverse conclusion concerning mitigation is sustainable. The Judge's whole-person analysis is also sustainable.¹ See ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). See also *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 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). Accordingly, the Judge's decision is neither arbitrary, capricious, nor contrary to law

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

¹See, e.g., Decision at 9: "Applicant has not acted with due diligence to resolve his remaining outstanding debts, despite availability of almost \$3,000 a month after his expenses are paid. Applicant's failure to honestly answer questions about his finances raises questions about his trustworthiness. He has not demonstrated a rational reason for his decision to answer 'no' to two financial questions on his security clearance application. His failure at his hearing to candidly explain why he provided a false SF-86 remains a security concern."