

KEYWORD: Guideline F

DIGEST: The record provides no reason to doubt that Applicant's decision to represent himself was knowing and intelligent. Having chosen to represent himself, Applicant cannot complain about the quality of his self-representation. Adverse decision affirmed.

CASENO: 08-09808.a1

DATE: 09/21/2009

DATE: September 21, 2009

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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**

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 27, 2009, 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 June 22, 2009, after the hearing, Administrative Judge Roger C. Wesley 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 erred in his application of the pertinent mitigating conditions; whether the Judge’s whole-person analysis was erroneous; and whether the Judge denied Applicant due process of law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a system administrator for a defense contractor. He has received a two-year degree from a technical institute. In the early 2000s, he had substantial debt, resulting from student loans and from credit card use. Applicant filed for Chapter 7 bankruptcy protection and was discharged in bankruptcy in September 2004.

In August 2004, Applicant engaged in an “oral partnership” with another person for the purchase of residential property. Decision at 2. The partner would take care of repairs and cover the monthly loan payments, while Applicant would secure financing. Applicant paid nothing down for the property, the purchase of which was covered by two separate loans—one, a second mortgage, in the amount of \$55,000 and the other, a conventional first mortgage, in the amount of \$220,000—from the same lender. The Judge observed, “Just how Applicant was able to finance the purchase of his investment property for nothing down and little track history, and during a pending bankruptcy, is unclear.” *Id.* at 3. Applicant’s partner ceased making payments on the investment property, and, from November 2004 until October 2006, neither Applicant nor his partner made any payments.

In 2005, the lender sold the two loans to two separate entities. The holder of the \$55,000 note charged it off, while the holder of the other sought to sell the property off at a public auction. Apparently unsuccessful in finding a buyer at the foreclosure sale, the holder of the \$220,000 note, according to Applicant, “either retained title . . . or resold it to a third party.” *Id.* at 4. The Judge commented that the record evidence is not sufficient to resolve the question of who owns this property. Applicant has been working with a credit building firm to resolve his disputes with the creditors in question. He nets over \$1,100 a month after he pays his expenses.

Applicant contends that he was denied due process of law, insofar as he acted *pro se*. He contends that the Judge should have *sua sponte* held the record open for him to provide additional evidence, for example, documentation concerning the loan in question. He implies that, had he been represented by an attorney at the hearing, he would have requested an opportunity to present additional documents, which could have answered questions lingering after the close of the record. An examination of the record demonstrates that Applicant was notified of the rights afforded him by the Directive, including his right to employ counsel, both prior to the hearing and at the beginning

of it. Applicant has some post-high school education and appears from the transcript to be articulate and able to understand the allegations against him. The record provides no reason to doubt that Applicant's decision to represent himself was knowing and intelligent. Having chosen to represent himself, Applicant cannot complain about the quality of his self-representation. *See* ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009); ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). Furthermore, Applicant has not demonstrated that any documents that he, with the advantage of hindsight, might have submitted at the hearing would likely have produced a different result.

In the analysis portion of his decision, the Judge stated that the evidence was not sufficient to resolve the issue of whether state law would operate to Applicant's benefit by relieving him of liability for a possible deficiency judgement. He also noted that Applicant had not provided performance evaluations from his job, letters of support from supervisors, etc. However, the Judge's decision relied in large measure upon Applicant's having entered into a facially risky real estate purchase while undergoing bankruptcy, thereby evidencing a lack of trustworthiness and reliability.<sup>1</sup> Despite the Judge's comments about various types of documentation which could have been submitted, there is little reason to believe that such evidence would have supported the grant of a clearance under the facts of this case.<sup>2</sup> Reliance upon the extent to which a debt may be legally unenforceable is generally not sufficient to demonstrate a reasonable response to debts or a good faith effort to pay them.<sup>3</sup> While a Judge has the authority to hold a record open for the submission of other evidence, he has no positive obligation to do so, especially when, as here, Applicant does not request it.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *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 Judge's decision that "it is not clearly consistent with the national

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<sup>1</sup>"Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit in financial cases (as here) and bring into play security concerns covered by the financial considerations guideline." Decision at 7.

<sup>2</sup>Applicant argues on appeal that, prior to the hearing, he had no idea that the state's anti-deficiency law could be at issue. However, the record demonstrates that it was Applicant himself who introduced the question of his debts' enforceability. In response to a question about a possible deficiency judgement against him, Applicant replied that lenders generally do not pursue such avenues of recovery. Tr. at 89. The Judge's comments about the absence of corroboration for Applicant's opinion are reasonable, in light of the fact that Applicant bore the burden of persuasion as to mitigation. Directive ¶ E3.1.15.

<sup>3</sup>*Cf.* ISCR Case No. 06-14521 at 3 (Ap. Bd. Oct. 15, 2007).

interest to grant or continue Applicant's security clearance" is sustainable on this record. Decision at 8. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'").

**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