

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant was advised in writing and orally of right to employ counsel. There is no reason to conclude that her decision to represent herself was not knowing or voluntary. Adverse decision affirmed.

CASENO: 09-02110.a1

DATE: 04/16/2010

DATE: April 16, 2010

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In Re:)	
)	
-----)	ISCR Case No. 09-02110
)	
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 30, 2009, 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 January 27, 2010, after the hearing, Administrative Judge Marc E. Curry 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 she was denied due process; whether the Judge mis-weighed the evidence; whether the Judge's whole-person analysis was erroneous; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant works for a Defense subcontractor that provides communications services. She is a shift supervisor. She served in the Army from 1998 until 2005 and is taking college courses in computer information systems. She divorced her husband in 2006, after six years of marriage.

After her divorce, Applicant purchased a house for \$325,000, financing the entire purchase. She also financed the purchase of furniture. She became financially overwhelmed and began to fall behind in her mortgage payments. Ultimately the lender foreclosed on the home, reselling it with no deficiency. Around the same time her house payments became delinquent, she experienced delinquencies in other accounts as well—debts for medical services, credit cards, etc. She has contracted with a credit counseling service, paying \$137 a month toward the start-up fee. “Applicant provided no evidence documenting either her agreement with the company or the payments she allegedly made to the company.” Decision at 4.

In completing her security clearance application (SCA) Applicant answered “no” to a question inquiring as to whether, within the prior seven years, she had debts that were delinquent more than 180 days. This answer was not correct. The Judge concluded that, given the extent and significance of Applicant's delinquent debts, especially the mortgage payments, her claim of innocent error is not credible.

Applicant contends that, at the hearing, she was nervous and not so fully prepared as she needed to be. We construe this as a claim that she was denied due process of law by proceeding *pro se*. We have examined the record. Applicant was advised, in writing prior to the hearing and orally at the beginning of the hearing, of her right to employ counsel to represent her. Tr. at 5. There is no reason to conclude that she was not aware of her right to counsel or that her decision to represent herself was not knowing or voluntary. *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 presented documentary evidence and called a witness in her own behalf. The record demonstrates that she presented a satisfactory case in her own behalf. Her appeal cites to no evidence that she would have presented but was unaware of her right to do so, or to any other matter which would suggest that she was denied the due process afforded by the Directive. *See* ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

Applicant claims on appeal that the Judge did not properly weigh the evidence favorable to her. However, the Judge’s decision acknowledges and discusses such matters as her divorce, which is a mitigating circumstance, and that she had also paid off certain of her debts. However, he also noted that Applicant’s financial problems arose after the divorce and were due, in large part, to her own decisions, such as 100% financing of a home and its furnishings. The Judge also reasonably noted that Applicant had not provided much information about her debt repayment plan. Furthermore, his conclusion that Applicant knowingly omitted information on her SCA was reasonable. We find no reason to conclude that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

We also conclude that the Judge’s whole person analysis, although brief, complied with the requirements of Directive ¶ E2.2.1, in that the Judge considered the totality of Applicant’s conduct in reaching his decision. *See* ISCR Case No. 08-02464 at 3 (App. Bd. Jul. 16, 2009); ISCR Case No. 05-03948 at 3-4 (App. Bd. May 21, 2007); ISCR Case No. 04-09959 at 6 (App. Bd. May 19, 2006).

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 adverse 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).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, 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