KEYWORD: Guideline F

DIGEST: Applicant was advised of his right to employ counsel to represent him at the hearing. Applicant failed to rebut the presumption that the Judge was not biased against him. Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 10-02364.a1

DATE: 04/04/2011

DATE: April 4, 2011

In Re:	)	
----------	)	ISCR Case No. 10-02364
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 August 25, 2010, 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 21, 2011, after the hearing, Administrative Judge Noreen A. Lynch 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 Applicant was denied due process; whether the Judge was biased against Applicant; whether the judge failed to consider all of the

record evidence; and whether the Judge failed properly to apply the mitigating conditions. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. He has a degree in engineering. He served in the U.S. Army from 1978 until 1983.

Applicant had two delinquent credit card debts, totaling approximately $51,000. One of the two debts, around $21,000, was charged off by the creditor. He has attempted to work out a settlement, but he rejected an offer by the creditor as being more than he could afford. His other debt, around $30,000, was also charged off by the creditor. He stated that the debt was sold to another party and that someone had misplaced the paperwork. He stated until the purchaser "find[s] the debt" it cannot be collected. Decision at 2.

Applicant does not want to pay the interest and penalties on these debts. He has considered bankruptcy. He has also considered waiting until these two accounts disappear from his credit report and then applying for a clearance. He is capable of meeting his current financial obligations.

Applicant contends that he was denied due process because he was not represented at the hearing by a lawyer. However, the record demonstrates that, both in pre-hearing guidance and at the beginning of the hearing, he was advised of his right to counsel. Pre-Hearing Guidance, November 8, 2011; Tr. at 6. Applicant stated to the Judge that he understood his right to counsel but had decided to represent himself. Having decided to do so, he cannot fairly complain about the quality of his self-representation or seek to be relieved of the consequences of his decision to represent himself. *See, e.g.*, ISCR Case No. 08-03110 at 2 (App. Bd. Jan. 27, 2009).

Applicant also contends that the Judge was unduly swayed by the presentation of the Department Counsel, with the result that the Judge was biased against Applicant. However, we have examined the record and find nothing to support Applicant's contention that the Judge lacked the requisite impartiality. Applicant's presentation on appeal is not sufficient to rebut the presumption that the Judge was impartial. *See, e.g.*, ISCR Case No. 08-01306 at 4 (App. Bd. Oct. 28, 2009) (There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion).

Applicant contends that the Judge failed to consider all of the record evidence, for example that his debts may be non-collectible. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Applicant's presentation on appeal is not sufficient to rebut this presumption. Applicant's appeal includes additional evidence not contained in the record, for example references to people whom Applicant contends have done far worse than fail to pay two debts but who have not been denied access to national security information. We cannot consider this new evidence. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board").

The record supports a conclusion 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 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