

KEYWORD: Guideline E; Guideline M; Guideline J

DIGEST: The Board has inherent authority to entertain a request for reconsideration, however, there is no right to reconsideration. The Board's prior decision embraced the subject or mitigation when it concluded that the record as a whole does not support a favorable decision. Adverse decision affirmed.

CASENO: 03-23504.a2

DATE: 02/22/2008

DATE: February 22, 2008

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 03-23504

APPEAL BOARD DECISION
ON APPLICANT'S REQUEST
FOR RECONSIDERATION

APPEARANCES

FOR GOVERNMENT
 James F. Duffy, Esq., Department Counsel

FOR APPLICANT
 Rebecca L. Saitta, Esq.

On December 12, 2007, the Board issued an Appeal Board Decision in Applicant's case. On January 9, 2008, Applicant submitted a request for reconsideration of this decision. Department Counsel submitted a response on January 24, 2008.

The Board has inherent authority to entertain a request to reconsider its decisions. However, there is no right to reconsideration; the Board has the sole discretion to decide whether to exercise its inherent authority to reconsider one of its decisions. *See* ISCR Case No. 98-0621 at 1-2 (App. Bd. Nov. 23, 1999).

Applicant raises the following issue in his request for reconsideration: whether the Board failed to consider appropriate mitigating conditions in its analysis of Applicant's case. Applicant requests that the Board either affirm the Judge's decision or remand the case to the Judge to evaluate whether Applicant has established mitigation. However, consideration of possible mitigating conditions is fairly embraced in the Board's analysis of the issues raised in Department Counsel's original appeal brief¹ and in the Board's conclusion that the record as a whole does not sustain a favorable decision.

The Board addressed the Judge's favorable assessment of Applicant's credibility in its earlier decision. In light of that discussion and other evidence explicitly discussed in the Board decision, it is not plausible to entertain the possibility that a Judge could reasonably find Applicant's conduct mitigated on this record. Accordingly, Applicant's request for the Board to affirm the Judge's decision or remand the case is denied.

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: James E. Moody
James E. Moody
Administrative Judge

¹*See, e. g.*, Government's Appeal Brief at 15: "The Administrative Judge's decision was arbitrary, capricious, and contrary to law because he substituted a credibility determination for record evidence."

Member, Appeal Board