

DATE: July 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22603

PPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Esq, Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 17, 2003, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2 1992, as amended) (Directive). Applicant requested a hearing. On April 26, 2004, after the hearing, Administrative Judge Richard A. Cefola denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. The Appeal Board remanded the case back to the Administrative Judge on September 3, 2004. The Judge issued a new unfavorable decision on September 17, 2004. Applicant timely appealed. The Board remanded the case on August 9, 2005. The Judge issued a new unfavorable decision on November 2, 2005. Applicant timely appealed. The Board remanded the case on December 22, 2005. The Judge issued a new unfavorable decision on December 29, 2005. Applicant timely appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge erred in addressing Applicant's drug involvement as criminal conduct; whether the Judge's decision was arbitrary capricious and contrary to law; whether the Judge erred by failing to provide due process; whether the Judge erred by failing to amend the SOR.

The Board now has a complete file in the case. Because it is uncontested that Applicant's history of criminal conduct places his case under the current prohibitions of 10 U.S.C. §986, ⁽¹⁾ it is clear that Applicant may not be granted a security clearance by the Department of Defense. The Board need not reach the other issues raised by Applicant in his appeal. The Administrative Judge's ultimate adverse conclusion must be sustained.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman (Acting), Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. Applicant was sentenced to and incarcerated for a period of time greater than one year as a result of criminal conduct and conviction in the late 1970's. This circumstance places Applicant's case under 10 U.S.C. §986(c)(1), which prohibits the Department from granting or continuing a security clearance for an applicant who has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding one year, and was incarcerated as a result of that sentence for not less than one year.