

DATE: June 5, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25499

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 24, 2005, DOHA issued a statement of reasons 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 the case be decided on the written record. On November 29, 2005, after considering the record, Chief Administrative Judge Robert Robinson Gales granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Chief Administrative Judge's favorable clearance decision under Guidelines F is arbitrary, capricious or contrary to law.

Department Counsel argues that the Chief Administrative Judge erred in his application of Mitigating Conditions 3<sup>(1)</sup> and 6.<sup>(2)</sup> In support of his argument, Department Counsel contends the Judge relied too heavily on Applicant's own statements in making his findings. The Board does not find Department Counsel's argument persuasive.

The statements of the Applicant upon which the Chief Administrative Judge relied were offered into evidence by Department Counsel as part of the government's file of relevant material. The Board has previously noted that, given the realities of the evidentiary record available to the Judge in most DOHA cases and the substantial evidence rule, it is untenable to require, as a matter of law, that Judge's have more than Applicant's testimony for each finding of fact. This approach recognizes that there may be circumstances where a Judge has sound reasons not to rely on an applicant's uncorroborated testimony for findings of fact, and that the fact that a judge has enough evidence to make a finding of fact does not necessarily mean that the finding is entitled to much weight. *See, e.g.*, ISCR Case No. 03-10955 at 2 (App. Bd. May 30, 2006).

Department Counsel's argument concerning Guideline F Mitigating Condition 3 is premised on the notion that an Administrative Judge cannot apply that mitigating condition unless the applicant demonstrates that the debts at issue became delinquent as a direct result of the circumstances beyond applicant's control. The Board has previously noted that a Judge is not required to interpret Mitigating Condition 3 so narrowly. Given the wording of that mitigating condition, it is not unreasonable for a Judge to construe it as covering a situation where the record evidence shows that events beyond an applicant's control resulted in, or significantly contributed to the applicant's debts becoming delinquent, the applicant becoming unable to deal with or otherwise address debts that had become delinquent previously, and the applicant incurring new, unforeseen debts that aggravate or exacerbate the applicant's financial situation. Given the record in this case, Department Counsel has not demonstrated it was arbitrary capricious, or contrary to law for the Judge to give Applicant some credit for the mitigating evidence he produced under Mitigating Condition 3.

The Chief Administrative Judge made sustainable findings that Applicant had established a plan to resolve his financial problems and taken

significant actions to implement that plan. Applicant was not required, as a matter of law, to establish that he had completely paid off his indebtedness. Given the record in this case, Department Counsel has not demonstrated it was arbitrary, capricious, or contrary to law for the Judge to give Applicant some credit for the mitigating evidence he produced under Mitigating Condition 6.

Department Counsel is essentially arguing that the record evidence shows that Applicant was not as diligent about dealing with his financial problems as he could have been. However, the unfavorable record evidence cited by Department Counsel is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. As the trier of fact, the Judge had to weigh the evidence as a whole and decide whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. Department Counsel's disagreement with the Judge's weighing of the record evidence is not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. In this case, Applicant had made arrangements for paying-off his indebtedness, reasonably documented actions he had taken in furtherance of those arrangements, and demonstrated a not insubstantial reduction in his indebtedness. The Board need not agree with the Judge's decision under Guideline F to conclude that it is sustainable.

### Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman (Acting), Appeal Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Administrative Judge

Member, Appeal Board

Signed William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. Directive ¶ E2.A6.1.3.3. "The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)."
2. Directive ¶ E2.A6.1.3.6 ("The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts").