

DATE: February 21, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27335

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

#### FOR APPLICANT

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 2, 2004, 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 August 5, 2005, after the hearing, Administrative Judge James A. Young denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge erred by concluding that the security concerns raised by Applicant's history of criminal conduct had not been mitigated.

Applicant contends the Administrative Judge should have concluded that the security concerns raised by his history of criminal conduct were mitigated. In support of that contention, Applicant argues that: (a) the Judge made findings that were irrelevant or inaccurate; (b) several of the Judge's findings were true, but were not accurate characterizations of the nature and circumstances of Applicant's conduct; and (c) the criminal conduct was not recent.

Applicant asserts that the Administrative Judge made findings of fact that were irrelevant to his case. He specifically cites the following findings of the Judge: "His oldest child spent a year in a drug rehabilitation program. On the final day of the program he was required to provide a urine specimen for drug testing. As a result, he is now serving a two year term of confinement in a state facility." Inasmuch as the government's case against Applicant involves Applicant's conduct, as opposed to the conduct of the Applicant's son, the Judge's findings with regard to Applicant's son have no apparent relevance. Moreover, the Judge's decision contains no discussion as to how the cited evidence relating to the son is relevant to the security issues raised by Applicant's conduct. Absent the articulation of a plausible connection, the Judge's recitation of the findings of fact relating only to Applicant's son's conduct was error. However, the Board views this error as harmless because the Judge's adverse security clearance decision is sustainable on other grounds.

Applicant notes the Administrative Judge's finding that Applicant failed a 1986 anger management training program because he consumed alcohol. Applicant asserts on appeal that this finding has no basis in the record evidence. After a review of the record evidence, the Board concludes that there is a rational basis for this finding of fact.

Concerning Applicant's assertion that several of the Administrative Judge's findings were not accurate characterizations of Applicant's conduct, Applicant has not met his burden of demonstrating that the Judge's findings with respect Applicant's history of criminal conduct do not reflect a reasonable or plausible interpretation of the record evidence. Considering the record evidence as a whole, the Judge's findings are sustainable.

In this case, the Administrative Judge made sustainable findings that: (a) Applicant had been arrested on criminal charges in 1986, 1997 and 2002, and (b) had pleaded guilty to assault in the third degree and been sentenced to 24 months supervised probation with respect to the 2002 criminal incident. The Judge considered the possible application of Guideline J Mitigating Condition 1 [\(1\)](#) and articulated a rational basis for not applying it in this case. Given the record that was before him, the Judge's ultimate unfavorable clearance decision is sustainable.

The favorable record evidence cited by Applicant is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). 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*. Applicant'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. There is sufficient record evidence to support the Judge's conclusions. Thus, the Administrative Judge did not err in denying Applicant a clearance.

### Order

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. Directive ¶ E2.A10.1.3.1 ("The criminal behavior was not recent").