

DATE: September 6, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28915

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 August 17, 2004 DOHA issued a statement of reasons advising Applicant of the basis for that decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). On November 23, 2005, after a hearing, Administrative Judge Kathryn Moen Braeman denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. On arch 3, 2006 the Appeal Board remanded the case to the Administrative Judge with instructions to clarify an ambiguity in the Judge's findings of fact. On arch 21, 2006, the Administrative Judge issued a Remand Decision that denied Applicant's request for a security clearance. Applicant again timely appealed pursuant to the Directive.

Applicant raises the following issues on appeal: (a) whether the Administrative Judge's decision contains erroneous information concerning post-hearing augmentation of the record in the case; (b) whether the Judge's finding that Applicant falsified his responses about finances on a 2001 security clearance application was error; and (c) whether the Judge's conclusion that Applicant had not mitigated the government's concerns about his delinquent finances was error.

The hearing transcript reveals that the Administrative Judge left the record open for approximately two weeks after the hearing to afford Applicant an opportunity to provide additional information about his efforts to resolve his debts and establish a budget. On appeal, Applicant acknowledges that he was provided the additional time but takes exception to the Judge's statement in her decision that he asked for the additional time to submit evidence. Applicant asserts that he did not ask for the additional time, but that the Judge offered it to him. A review of the hearing transcript reveals that Applicant is correct on this point. However, the minor detail of whether or not Applicant or the Judge initiated the idea to hold the record open is not relevant to any issue involving Applicant's procedural rights. Applicant does not further suggest that his procedural rights were violated. Thus, his argument does not establish harmful error on the part of the Judge.

Applicant denies on appeal, as he did at the hearing, that he deliberately falsified information about his credit delinquencies on his 2001 security clearance application. Applicant asserts that the amount of time he had to complete his security clearance application was shortened because he had been hospitalized when the application was issued and he was unable to gather the information he needed to answer fully. He claims he knew the government would perform a

credit check during the background investigation and would eventually find out about his delinquent debts. Applicant states that he admitted to the falsification allegations in his answer to the statement of reasons with the thought that he would explain at the hearing why he didn't list his credit delinquencies.

The Administrative Judge had the opportunity to consider Applicant's explanation for why he failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. That conclusion is reasonably supported by the record evidence. Accordingly, the Board sustains the Judge's findings of deliberate, intentional falsification. *See Directive ¶ E3.1.32.1.*

Applicant states on appeal that four of his debt delinquencies have been satisfied. Applicant further states "I am finding the credit agencies do not willingly release information." No supporting evidence is cited by Applicant. The Board construes this assertion as an argument that the Administrative Judge did not properly consider evidence in mitigation under Guideline F. It is not clear from Applicant's appeal brief whether or not the four delinquencies he describes as satisfied were resolved before or after the close of the record evidence in this case. To the extent Applicant's brief refers to debts that were retired since the record in the case closed in June 2005, the brief attempts to introduce new evidence which the Board cannot consider on appeal. *See Directive ¶ E3.1.29.* To the extent the brief references debts that were retired before the close of the record, Applicant has failed to establish that the Judge erred. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

A review of the decision indicates that the Administrative Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. The Judge found in Applicant's favor with regard to several of the specific allegations brought under Guideline F. However, the Judge articulated a rational basis for not applying mitigating conditions for all of the allegations under Guideline F, or the allegations under Guideline E, and reasonably explained why the evidence Applicant had presented was insufficient to overcome the government's security concerns. Given the record that was before her, the Judge's unfavorable clearance decision is not arbitrary, capricious, or contrary to law.

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, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board