

DATE: July 3, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28821

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 18, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On December 15, 2005, after considering the record, Administrative Judge Martin H. Mogul 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 under Guidelines G, J, F and E had not been mitigated.

The Board construes Applicant's brief as contending that the Administrative Judge erred in concluding that the security concerns raised under Guidelines G, J, F and E had not been mitigated. In support of that contention, Applicant essentially reargues his case with respect to the limited evidence he presented below and presents new evidence in the form of additional explanations and documentary evidence relating to the completion of alcohol rehabilitation programs, the receipt of awards and work performance commendations, and the status of his financial situation. The Board does not find Applicant's contention persuasive.

The Administrative Judge did not have the opportunity to consider the new evidence that Applicant offers for the first time on appeal. The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Therefore, we may not consider Applicant's new evidence, and its submission does not demonstrate error on the part of the Judge. *See, e.g.*, ISCR Case No. 02-12789 at 3 (App. Bd. May 13, 2005).

The Applicant has not met his burden of demonstrating the Administrative Judge erred in concluding that the Guideline G, J, F and E allegations had not been mitigated. Although Applicant disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Administrative Judge made sustainable findings that Applicant had consumed alcohol at times to excess and to point of intoxication from 1978 to at least 2002, and had been involved in eight alcohol related criminal incidents

during that same period of time. The Judge also found that Applicant had a significant number of outstanding debts, and had provided false information on his security clearance application and in a signed, sworn statement to a government investigator. The 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 articulated a rational basis for not favorably applying any mitigating conditions in this case, and reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines G, J, F and E is not arbitrary, capricious or contrary to law.

Order

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

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board