

DATE: July 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31406

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 May 9, 2005, 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). Applicant requested a hearing. On January 18, 2006, after the hearing, Administrative Judge Darlene Lokey Anderson 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 issues on appeal: whether the Administrative Judge erred by concluding that the security concerns raised by Applicant's history of financial difficulties had not been mitigated; whether the Administrative Judge erred in concluding that Applicant had deliberately falsified material facts in a statement to a government investigator.

Applicant contends the Judge should have concluded that the security concerns raised by his history of financial difficulties and personal conduct had either not been established or were mitigated because he had paid off or was making payments on most of his debts and he did not deliberately falsify material facts in his ay 3, 2000 and May 12, 2000 statements to a Special Agent of the Defense Security Service. In support of the first contention, Applicant essentially reargues his case with respect to the evidence he presented below and provides additional explanations as to what efforts he has taken to resolve his remaining outstanding debts. The Board does not find Applicant's contentions persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Accordingly, we may not consider Applicant's explanations, and they do not demonstrate error on the part of the Administrative Judge.

The Applicant has not met his burden of demonstrating that the Administrative Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly 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 found that Applicant had a history of not meeting financial obligations which extended over many years. He had only recently resolved many of his debts and at the time the case was submitted for

decision still had significant outstanding debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent, not isolated, and still ongoing.

Applicant's statements about his intent and state of mind when he was interviewed by the government agent were relevant evidence, but they were not binding on the Administrative Judge. *See, e.g.*, ISCR Case No. 01-19278 at 6-7 (App. Bd. Apr. 22, 2003). As the trier of fact, the Judge had to consider Applicant's statements in light of the record evidence as a whole, and Applicant's denial of any intent to falsify material facts did not preclude the Judge from weighing the record evidence and making findings that contradicted Applicant's denials.

Finally, 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). The Board does not review a case *de novo*. Given the record that was before her, the Judge's ultimate unfavorable clearance decision under Guidelines F and E is sustainable. 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: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman (Acting), 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