

DATE: November 9, 2006

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 03-01184

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 15, 2004, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 21, 2006, after the hearing, Administrative Judge Henry Lazzaro 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 Administrative Judge's favorable security clearance decision under Guideline F is arbitrary, capricious, or contrary to law. [\(U\)](#)

The Administrative Judge made the following relevant findings :

Applicant is 66 years old and has been gambling since she was 16. In 1993, Applicant authorized her son to use a store credit card to make one purchase; her son abused the authorization and spent over \$4,000. Applicant did not pay the resulting debt, and it was eventually charged off. In 1991, Applicant lost a job paying \$13.86 per hour and thereafter found a job paying only \$5.25. This reduction in income eventually caused Applicant to file for bankruptcy. After Applicant lost her job in 1991, she withdrew \$60,000 from an IRA, losing \$20,000 by gambling and spending the rest on living expenses. Applicant did not pay the taxes and penalties due at the time of withdrawal, but paid them to the IRS in installments later. Once in 1999 and once again in 2000, Applicant requested an advance on her salary due to gambling losses. Applicant visited a counselor once to talk about her gambling upon the referral of her doctor and attended Gamblers Anonymous for a period of time at the request of her sister, but she does not believe she has a problem with gambling. Applicant's current credit report shows that she uses credit sparingly and pays her bills promptly.

The Administrative Judge concluded that Applicant currently lives well within her means and does not gamble in amounts greater than she can afford to lose and therefore did not find her gambling to be a disqualifying condition of security concern. He concluded that the negative financial information in Applicant's case was largely beyond her control because it occurred after she lost a high-paying job and was forced to work at the minimum wage, that the negative information was mitigated by the passage of time especially in light of her current financial situation, and that

she had made an attempt to settle the only debt alleged, a debt incurred by her son's unauthorized use of her credit card.

The application of disqualifying or mitigating conditions does not turn simply on a finding that one or more of them applies to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). As the trier of fact, the Administrative Judge has to weigh the evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. Department Counsel's disagreement with the Judge's weighing of the evidence, or her 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. *See, e.g.*, ISCR Case No. 03-11655 at 3 (App. Bd. Jan. 31, 2005).

In this case, the Administrative Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct. The Judge articulated a rational basis for applying relevant mitigating conditions and whole person factors, and reasonably explained why the evidence which the Applicant had presented in mitigation was sufficient to overcome the government's security concerns. The Board does not review a case *de novo*. 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. Given the record that was before him, the Judge's ultimate favorable clearance decision under Guideline F is sustainable. Thus, the Administrative Judge did not err in granting Applicant a clearance.

Order

The Administrative Judge's favorable security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

1. Department Counsel did not appeal the Judge's favorable finding under Guideline E. The Judge's favorable finding as to Guideline E is not at issue on appeal.