

DATE: June 6, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06249

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 January 10, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). Applicant requested a hearing. On November 30, 2005, after the hearing, Administrative Judge Henry Lazzaro 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 the security concerns raised under Guidelines F and J had not been mitigated. [\(1\)](#)

Applicant argues that the Administrative Judge erred in his characterization and weighing of Applicant's mitigating evidence. Absent that error, Applicant would have been entitled to a favorable clearance decision. The Board does not find Applicant's arguments persuasive.

The presence of some mitigating evidence does not alone compel the Administrative 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.

In this case, the Administrative Judge found Applicant had a lengthy and serious history of financial difficulties which included the nonpayment of debts and the failure to file Federal and state income tax returns for the tax years 2000 through 2003. The Judge's decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions. The Judge found in favor of the Applicant with respect to some of the allegations. However, the Judge articulated a rational basis for not favorably applying any mitigating conditions to the remainder of the allegations, 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 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 (Acting), Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant with respect to SOR paragraphs 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.k. Those favorable findings are not at issue on appeal.