

DATE: October 10, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12089

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 April 19, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 30, 2006, after the hearing, Administrative Judge Erin C. Hogan denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

The Board interprets Applicant's brief as raising the following issue on appeal: whether the Administrative Judge's adverse clearance decision under Guidelines E and J is arbitrary, capricious or contrary to law. [\(1\)](#)

Applicant contends that the Administrative Judge's adverse clearance decision should be reversed because the Applicant did not deliberately or intentionally make false statements on two Security Clearance Applications and in a signed, sworn statement to a government investigator. In support of that contention, Applicant argues that some of the omissions were due to oversight, she is not a dishonest person, and her omissions do not mean that she is unwilling or unable to protect classified information. Applicant also argues that an adverse security clearance decision will adversely impact her employment situation. The Board does not find Applicant's arguments persuasive.

Applicant's statements about her intent and state of mind when she executed the documents in question 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 provide false information did not preclude the Judge from weighing the record evidence and making findings that contradicted Applicant's denials.

The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply 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). Thus, 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.

In this case, 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 and whole person factors. The Judge found in Applicant's favor under Guideline H. However, the Judge articulated a rational basis for not favorably applying any mitigating conditions or whole person factors with respect to the Guideline E and J 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 her, the Judge's ultimate unfavorable clearance decision under Guidelines E and J is not arbitrary, capricious or contrary to law.

The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, 02-22325 at 3-4 (App. Bd. July 30, 2004). The federal government need not wait until an applicant actually mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). In this case, Applicant's multiple falsifications provide a sufficient rational basis for the Administrative Judge's unfavorable security clearance decision. *See, e.g.*, 04-12548 at 2-3 (App. Bd. Sept. 18, 2006).

Finally, the possibility that an unfavorable security clearance decision could have adverse consequences for an applicant's job situation is not relevant or material to an evaluation of the security significance of that applicant's conduct. *See, e.g.*, ISCR Case No. 02-11570 at 8 (App. Bd. May 19, 2004).

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: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant under Guideline H. That favorable finding is not at issue on appeal. Applicant refers to time lines for rehabilitation. The Board construes her argument as pertaining to Guideline H. Since the Judge found for her under that Guideline, the point is moot.