

DATE: December 22, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 03-16167

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jason R. Perry, Esq., Department Counsel

#### **FOR APPLICANT**

James R. Klimaski, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 30, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant elected to have his case decided on the written record. On July 15, 2005, after considering the written record, Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. On January 17, 2006, the Appeal Board remanded the case to the Administrative Judge. On March 20, 2006, the Administrative Judge again denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue: whether the Administrative Judge's decision is arbitrary, capricious, and contrary to law.

In Applicant's case, security concerns were raised regarding Applicant's reasons for leaving jobs in 1995 and 2000 and his falsification of a portion of his 2001 security clearance application (SF-86) dealing with his employment record.

The Administrative Judge found that: Applicant answered "No" when asked in the SF-86 if he had been fired or had left a job due to allegations of misconduct, unsatisfactory performance, or other unfavorable circumstances in the last ten years. In a sworn statement, Applicant later indicated that he might have been terminated in 1995 for poor performance, but failed to disclose that information on his SF-86, because he thought it might prevent him from getting another job. Applicant subsequently provided a statement from his supervisor at the earlier job stating that he lost his job in 1995 due to a company reorganization rather than for poor performance on his part. In the sworn statement and in his answer to the SOR, Applicant gave differing accounts of his termination in 2000. In one account, Applicant acknowledged that he "was terminated for threatening a supervisor."

Applicant argues that he did not falsify the SF-86, because he was not fired from the job he left in 1995 and because he stated that he was unsure of the exact nature of his departure from his job in 2000. The Administrative Judge found in Applicant's favor as to the 1995 termination, stating that he was not required to mention that job in answer to question 20 of the SF-86 because he was not terminated for an adverse cause. The Judge specifically stated that Applicant had mitigated the SOR allegation as to that job. However, the Judge ruled against Applicant as to the 2000 termination and the falsification of the SF-86, calling attention to the differing accounts Applicant gave for his termination in 2000. The

Judge performed a "whole person" analysis and concluded that Applicant's differing accounts regarding one termination and his stated willingness to lie if necessary to get a job raised security concerns.

As the trier of fact, the Administrative Judge has a responsibility 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 in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.* ISCR Case No. 05-03939 at 2 (App. Bd. Sept. 1, 2006). In this case, the Judge made sustainable findings of fact. The Judge's findings provide a reasonable basis for her decision to deny Applicant a security clearance.

### **Order**

The Administrative Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board