

DATE: June 15, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18534

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

#### **FOR APPLICANT**

D. Christopher Russell, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 27, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On December 27, 2005, after considering the record, Administrative Judge Thomas M. Crean 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's unfavorable clearance decision under Guideline G is arbitrary, capricious or contrary to law.

Applicant argues that the Administrative Judge's unfavorable decision should be reversed because Applicant's last alcohol-related criminal incident occurred in 1996, he has since demonstrated positive changes in behavior supportive of sobriety, and his current level of alcohol consumption is not of security concern. The Board does not find Applicant's arguments persuasive.

The application of disqualifying and 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). 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 Administrative Judge made sustainable findings that Applicant was involved in alcohol-related criminal incidents in 1983, 1993 and 1996, and that he continues to consume alcohol to the point of intoxication approximately two times a month. 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 articulated a rational basis for applying the relevant disqualifying conditions and for not favorably applying any

mitigating conditions in this case. He 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: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board