

DATE: February 16, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18254

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 29, 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), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). Applicant requested a hearing. On June 27, 2005, after the hearing, Administrative Judge John Grattan Metz, Jr. 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 that the security concerns raised by Applicant's history of indebtedness had not been mitigated.

Applicant contends the Administrative Judge should have concluded that the security concerns raised by her history of indebtedness were mitigated by application of Financial Considerations Mitigating Conditions 1, [\(1\)](#) 3, [\(2\)](#) and 6. [\(3\)](#) In support of that contention, Applicant argues that: (a) the Judge erred with respect to several findings as to the nature and circumstances of several of Applicant's debts, (b) the debts resulted from medical problems and marital difficulties, (c) the debts are old, she is current on her recent debts, and all but three of the debts are paid off and she is making inquiries and arrangements to pay the remaining valid debts. Applicant also cites to a Hearing Office decision in which a different Judge found in favor of an Applicant with an arguably worst history of financial difficulties.

The factual findings which Applicant challenges reflect permissible interpretations of the record evidence by the Administrative Judge. Applicant has not met her burden of demonstrating that the Judge's material findings with respect Applicant's history of financial difficulties do not reflect a reasonable or plausible interpretation of the record evidence. Considering the record evidence as a whole, the Judge's findings about Applicant's history of indebtedness are sustainable.

The decision in another DOHA Hearing Office case does not demonstrate error by the Administrative Judge in this case. A decision by a Hearing Office Judge is not legally binding precedent on that Judge's colleagues in other cases. Likewise, the cited case is not legally binding precedent on the Board. *See* ISCR Case No. 01-22606 at 3-5 (App. Bd. Jun. 30, 2003).

Given the record in this case, the Administrative Judge was not required, as a matter of law, to conclude Applicant's history of financial difficulties was fully mitigated by application of Financial Considerations Mitigating Conditions 1, 3, and 6. The application of Adjudicative Guidelines disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, the application of a disqualifying or mitigating condition 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). Even if an Administrative Judge concludes that a particular Adjudicative Guidelines disqualifying or mitigating condition is applicable, the Judge must still consider what weight it is reasonably entitled to be given in light of the other applicable provisions of the Adjudicative Guidelines and the record evidence as a whole. *See, e.g.*, ISCR Case No. 02-05110 at 4-6 (App. Bd. Mar. 22, 2004). Accordingly, the Judge's finding that many of the Applicant's original financial problems could be traced to conditions that were largely beyond her control did not compel the Judge to make a favorable security clearance decision. Even if Applicant's financial difficulties initially arose due to circumstances outside her control, the Judge could consider whether Applicant acted in a reasonable manner when dealing with her financial difficulties. *See, e.g.*, ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999). In this case, it was not arbitrary or capricious for the Judge to consider such factors as: (a) the length of Applicant's history of financial difficulties, (b) the extent and nature of her indebtedness, (c) the extent and effectiveness of her efforts to deal with that indebtedness, and (d) the fact that some of the debts were still unpaid, in reaching his adverse security clearance decision. The Judge found in Applicant's favor with respect to several of factual allegations alleged in the SOR. However, given the record evidence, the Judge was not required to conclude, as a matter of law, that Applicant's history of financial difficulties was fully mitigated under Financial Considerations Mitigating Conditions 1 and 3.

Given the overall history of Applicant's financial problems, the sizable nature of the indebtedness, and the fact that some of the debts at issue had been incurred years earlier, but had still not been resolved at the time of the hearing, it was not arbitrary or capricious for the Judge to decide that the evidence was insufficient for him to conclude that Applicant's efforts to resolve her debts warranted full mitigation of her financial history through application of Financial Considerations Mitigating Condition 6. Although the Judge gave the Applicant some credit under Mitigating Condition 6, the Judge was not required, as a matter of law, to conclude Applicant's history of financial difficulties was fully mitigated under that mitigating condition.

There is sufficient record evidence to support the Judge's conclusions. Thus, the Administrative Judge did not err in denying Applicant a clearance.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. Directive ¶ E2.A6.1.3.1 ("The behavior was not recent").
2. Directive ¶ E2.A6.1.3.3 ("The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)").
3. Directive ¶ E2.A6.1.3.6 ("The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts").