

DATE: February 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20730

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 August 24, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement) and Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 20, 2005, after the hearing, Administrative Judge Charles D. Ablard 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 issues on appeal: (1) whether the Administrative Judge made errors in his findings of fact; (2) whether the Administrative Judge properly employed the "whole person" concept when deciding the case under Guideline G; and (3) whether the Administrative Judge's failure to apply Guideline H mitigating factors was arbitrary, capricious, or contrary to law.

In his appeal brief, Applicant persuasively argues that several factual findings made by the Administrative Judge are not supported by the record evidence. These findings include: (a) Applicant was arrested in 2003 (while an alcohol incident took place which involved interaction with the police, there is no evidence Applicant was arrested); (b) Applicant was arrested for an alcohol-related driving offense in 1999 (while Applicant was arrested in 1999 for an alcohol-related offense, it did not involve driving); (c) Applicant attended counseling for drug use for two months in 1991 and 1992 (Applicant actually attended multi-substance abuse counseling between December 2001 and January 2002 after a conviction for DUI); and (d) Applicant regarded drinking six to twelve beers over a five or six hour period as moderate (Applicant actually stated that drinking six to twelve beers over a five or six hour period led him to a state of moderate intoxication). After a review of the record evidence and the Administrative Judge's decision as a whole, the Board concludes that these errors are harmless. The errors mostly involve immaterial details that do not undercut in any significant way the Judge's overall findings and conclusions and his ultimate adverse security clearance decision.

Other allegations of factual error made by Applicant on appeal lack merit. The Administrative Judge made findings that: (i) Applicant used drugs with varying frequency from 1995 to 2001; and (ii) Applicant engaged in a pattern of rule violations. Both of these findings are reasonably supported by the record evidence.

Applicant asserts on appeal that the Administrative Judge may have overlooked the "whole person" concept when

deciding the case under Guideline G. He cites the testimony of witnesses who testified as to his positive attributes and cites the documentary record concerning his professional record. A reading of the Judge's decision reveals that the Judge made specific mention of this favorable evidence in his decision. Therefore, Applicant's complaint appears to be that the Judge gave insufficient weight to this evidence. Mere disagreement with the weight assigned particular evidence by a Judge does not establish error. Applicant has not met his burden of establishing error on this point.

Applicant complains that the Judge's adverse findings under Guideline H are mitigated by the facts that his drug use was not recent and he has exhibited a demonstrated intent not to use drugs in the future. After a review of the record evidence, the Board concludes that the Judge was not required, as a matter of law, to conclude that the drug involvement case against Applicant was mitigated. The Judge's adverse findings and conclusions under Guideline H are reasonably supported by the record evidence. Applicant's ability to offer an alternate interpretation of the record evidence does not establish error.

Applicant has failed to meet his burden of establishing harmful error below. 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: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Concurring Opinion of Administrative Judge Michael Y. Ra'anan

I have no substantive difference from my colleagues on this case.

The Board is operating under a new Operating Instruction (OI-17), which I interpret as having no impact on the substance of Appeal Board decisions. The Board decision here uses the short format authorized in OI-17. The Board decision is somewhat more expansive than my reading of the short format laid out in the attachment to OI-17.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board