

DATE: September 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22475

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 December 21, 2004, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 31, 2006, after the hearing, Administrative Judge Michael H. Leonard 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 F is arbitrary, capricious, or contrary to law.

Applicant contends the Administrative Judge should have concluded that the security concerns raised by her history of financial difficulties had been mitigated because her financial problems were largely the result of circumstances beyond her control--periods of unemployment, divorces, and medical emergencies--and she has received counseling and is working to resolve her problems. In support of her contention, Applicant essentially reargues her case with respect to the evidence she presented below and provides additional explanations as to what efforts she has taken to resolve her remaining outstanding debts. Applicant does not challenge the Judges findings of fact on the eleven financial concerns listed in the SOR. The Board does not find Applicant's contentions persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Accordingly, we may not consider Applicant's explanations, and they do not demonstrate error on the part of the Administrative Judge.

The application of 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, 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 Administrative 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.

The Applicant has not met her burden of demonstrating that the Administrative Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, she has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

In this case, the Administrative Judge found that Applicant had a history of not meeting financial obligations which extended over many years. At the time the case was submitted for decision she still had significant outstanding debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were recent, not isolated, and still ongoing.

The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). The Board does not review a case *de novo*. Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable. Thus, the Judge did not err in denying Applicant a clearance.

Order

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

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board