

DATE: July 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22281

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 October 27, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On January 30, 2006, after considering the record, Administrative Judge Philip S. Howe denied Applicant's request for a security clearance.⁽¹⁾ 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 Guidelines E and F is arbitrary, capricious or contrary to law.

Applicant argues that the Administrative Judge's unfavorable clearance decision should be reversed because Applicant did not intend to falsify his security clearance application and the Judge erred with respect to a finding about one of Applicant's debts. In support of the latter argument, Applicant offers new evidence in the form of an additional explanation as to the circumstances relating to the debt. The Board does not find Applicant's arguments persuasive.

Applicant's statements about his intent and state of mind when he executed his security clearance applications were relevant evidence, but they were not binding on the Administrative Judge. *See, e.g.*, ISCR Case No. 01-19278 at 6-7 (App. Bd. Apr. 22, 2003). As the trier of fact, the Judge had to consider Applicant's statements in light of the record evidence as a whole, and Applicant's denial of any intent to falsify a statement did not preclude the Judge from weighing the record evidence and making findings that contradicted Applicant's denials. Considering the record as a whole, the Judge had a sufficient basis to find that Applicant's omissions were deliberate and intentional. Therefore, the Judge's unfavorable clearance decision under Guideline E is not arbitrary, capricious or contrary to law.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Its submission does not demonstrate error on the part of the Administrative Judge. *See, e.g.*, ISCR Case No. 02-12789 at 3 (App. Bd. May 13, 2005). Therefore, the Board may not consider Applicant's additional explanation about his debt. The Judge's finding under Guideline F is reasonably supported by the record.

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. The Administrative Judge found in Applicant's favor with respect to SOR paragraphs 1.a, 1.b, 1.d, and 1.e, and Guideline J. Those favorable findings are not at issue on appeal.