

DATE: March 15, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22709

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

Kathryn MacKinnon, Esq., Deputy Chief Department Counsel

FOR APPLICANT

William S. Aramony, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 27, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline E (Personal 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 August 15, 2005, after considering the record, Administrative Judge David S. Bruce 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 findings and conclusions regarding Applicant's 2001 termination by his private employer and his description of that event on a 2002 security clearance application were arbitrary and capricious in light of all the record evidence.

The Administrative Judge found that: in 2001, Applicant was terminated by a private employer for poor performance on the job, associated with unauthorized use of the company computer system (including to access pornographic web sites). Applicant understood his unauthorized use of the computer system resulted in poor performance at the time, but did not reveal it to his wife and family. In June 2002, Applicant prepared a security clearance application, wherein he acknowledged having been fired and explained that it had been due to unsatisfactory performance, low product demand, a reduction-in-force and personnel reorganization mandates. The Judge's findings represent a plausible interpretation of the record evidence. The Judge concluded that Guideline E, Disqualifying Condition 1 [\(1\)](#) and Disqualifying Condition 2 [\(2\)](#) applied to Applicant's case. The Judge discussed several mitigating conditions and the "whole person" concept, and concluded that Applicant had not shown that it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant argues for an alternative interpretation of the record evidence and then the successful application of mitigating conditions and a favorable "whole person" analysis based on the alternative interpretation. Applicant's arguments do not demonstrate that the Judge erred. The Board need not agree with the Judge to conclude that his interpretation and resultant analysis are sustainable. 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: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, 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

1. Directive ¶ E2.A5.1.2.1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances.
2. Directive ¶ E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.