

DATE: February 15, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23511

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Chief Department Counsel

FOR APPLICANT

Philip D. Cave, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 17, 2004, DOHA issued a statement of reasons 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 the case be decided on the written record. On June 17, 2005, after considering the record, Administrative Judge Wilford H. Ross granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Administrative Judge's conclusion that the security concerns raised by Applicant's history of indebtedness had been mitigated is arbitrary and capricious.

Department Counsel contends that it was arbitrary and capricious for the Administrative Judge to conclude that the security concerns raised by Applicant's history of indebtedness were mitigated by application of Financial Considerations Mitigating Conditions 3 [\(1\)](#) and 6. [\(2\)](#) In support of that contention, Department Counsel argues that: (a) Applicant partially paid-off, or settled at a reduced amount, only four of nine debts, and only after those debts had been delinquent for many years or placed for collection, (b) Applicant denied responsibility for the remaining debts, disputed them with his creditors, and they were eventually charged-off or removed from his credit report--circumstances which Department Counsel argues are more consistent with a conclusion that Applicant actually owed the debts and that they had been written-off or were no longer timely, and (c) Applicant had indebtedness that predated his medical problems.

The findings that Applicant had successfully disputed five of the debts--based upon evidence Applicant had consistently denied owing them, had disputed them, and they had been charged-off or deleted from his credit report, or paid by an insurance carrier--reflect permissible interpretations of the record evidence by the Administrative Judge. The fact that Department Counsel can articulate a reasonable alternative interpretation is of no moment. Department Counsel has not met her burden of demonstrating that the Judge's findings 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.

Department Counsel's argument concerning Financial Considerations Mitigating Condition 3 is premised on the notion that an Administrative Judge cannot apply that mitigating condition unless the applicant demonstrates that the debts at

issue became delinquent as a direct result of the circumstances beyond applicant's control. The Board has previously noted that a Judge is not required to interpret Mitigating Condition 3 so narrowly. Given the wording of that mitigating condition, it is not unreasonable for a Judge to construe it as covering a situation where the record evidence shows that events beyond an applicant's control resulted in, or significantly contributed to: (a) the applicant's debts becoming delinquent, (b) the applicant becoming unable to deal with or otherwise address debts that had become delinquent previously, and (c) the applicant incurring new, unforeseen debts that aggravate or exacerbate the applicant's financial situation. The Board has also previously noted that while it is reasonable to expect applicants to have documentation about the satisfaction of specific debts, it is not so obvious to expect that applicants will necessarily have documentation about how they got into financial difficulties. In such cases, it is not unusual for the applicant's financial difficulties to have begun years earlier, while claims of satisfaction of debts alleged in the SOR involve more recent events. *See* ISCR Case No. 03-17479 at 4 (App. Bd. Nov. 3, 2005). Given the record in this case, Department Counsel has not demonstrated it was arbitrary, capricious, or contrary to law for the Judge to give Applicant some credit for the mitigating evidence he produced under Financial Considerations Mitigating Condition 3.

As to Financial Considerations Mitigating Condition 6, the Administrative Judge made sustainable findings that Applicant had paid-off, was in the process of paying-off, or had successfully disputed the debts at issue. Applicant was not required, as a matter of law, to establish that he had paid-off every debt in its original full amount. Again, given the record in this case, Department Counsel has not demonstrated it was arbitrary, capricious, or contrary to law for the Judge to give Applicant some credit for the mitigating evidence he produced under Financial Considerations Mitigating Condition 6.

Department Counsel is essentially arguing that the record evidence shows that Applicant was not as diligent about dealing with his financial problems as he could have been. However, the unfavorable record evidence cited by Department Counsel is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. As the trier of fact, the Judge had to weigh the evidence as a whole and decide whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. Department Counsel's disagreement with the Judge's weighing of the record evidence is not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. In this case, Applicant had: (a) articulated a comprehensive approach for paying-off, settling or otherwise resolving his indebtedness, (b) reasonably documented actions he had taken in furtherance of that approach, and (c) demonstrated a not insubstantial reduction in his indebtedness and an improvement to his financial situation. The Board does not have to agree with the Judge's decision to conclude that it is sustainable under the whole person factors.

Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

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.A6.1.3.3. "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)."
2. Directive ¶ E2.A6.1.3.6. "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."