

DATE: April 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23772

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 January 6, 2005, ⁽¹⁾ DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant requested a hearing. On September 13, 2005, after the hearing, Administrative Judge Barry M. Sax 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: whether the Administrative Judge made factual errors regarding Applicant's financial situation; whether the Judge's decision was based on a faulty "risk analysis;" and whether the Judge's lack of attention during the hearing (in Applicant's view) caused the Judge to be unduly influenced by Department Counsel outside the hearing in order to reach his decision. Applicant also raised concerns about the impact that an adverse security clearance decision would cause him and his family as well as his employer.

In appealing the Administrative Judge's findings and conclusions as to his financial situation, Applicant objects to the Administrative Judge's statements regarding four SOR items--¶¶ 1.a, 1.b, 1.g, and 1.k, as well as other characterizations of his testimony in the Judge's security clearance decision. The Judge found in favor of Applicant as to ¶¶ 1.b and 1.k; therefore, those items are not in issue in this decision. With regard to Applicant's testimony as a whole, the Judge had a duty to consider Applicant's statements as part of the record evidence, but he was not required to accept them at face value. Specifically with regard to ¶ 1.g, Applicant objects to the Judge's characterization of his testimony, but does not state specific error on the part of the Judge. As to ¶ 1.a, Applicant notes contradictory findings of fact. The Judge's statements reflect information submitted by Applicant at different times during the settlement of his affairs. He submitted information that the creditor in ¶ 1.a had not responded to a letter he sent. Applicant also provided evidence that at a later date the creditor agreed to delete the account from his credit report. To the extent that the Judge's findings in ¶ 1.a are contradictory and therefore erroneous, the error is harmless, since the record evidence as a whole supports the Judge's adverse findings and conclusions as to Guideline F.

At the hearing, the Administrative Judge stated that his decision would be a risk analysis. (Hearing Transcript at 19-20.) In his decision, the Judge listed nine adjudicative process factors set forth in the Directive (at ¶ E2.2.1) for examining the "whole person." Applicant disagrees with the Judge's analysis. Applicant states that he is a patriotic American. He adds that he is a responsible father and has a supportive wife. He restates in general terms the improvements he is

making in his financial situation, and he notes the adverse impact that loss of his security clearance would have on his ability to support his family and on his employer's ability to perform defense contracts. The record supports the Judge's adverse security clearance decision. The fact that Applicant would weigh these factors differently and reach a different outcome is not indicative of error. The fact that denial of a security clearance would have an adverse impact on Applicant's income or on his employer is not relevant to the assessment of Applicant's security clearance eligibility. *See, e.g.*, ISCR Case No. 03-00060 at 4 (App. Bd. Oct. 18, 2004).

Apart from his financial difficulties, Applicant's falsification of a security clearance application raises a serious question about Applicant's judgment, reliability, and trustworthiness and provides a sufficient basis for an unfavorable security clearance decision. *See, e.g.*, ISCR Case No. 03-12329 at 4 (App. Bd. Dec. 18, 2003).

Applicant states that the Administrative Judge "dozed off and napped" "multiple different times" during the hearing. Applicant states that he brings up the issue on appeal because he does not believe the Judge could have given his case full attention. Applicant asserts that under those circumstances Department Counsel may have had more influence on the Judge's decision than is proper and that Applicant's rights were therefore prejudiced. In making such a claim, there is a rebuttable presumption that the Judge is impartial and unbiased, and that he carried out his duties in good faith. A person seeking to rebut or overcome that presumption has a burden of presenting clear evidence to the contrary. *See, e.g.*, ISCR Case No. 02-09220 at 4 (App. Bd. Sep. 28, 2004). A reading of the transcript does not reveal any such behavior as Applicant alleges. Neither Applicant nor his attorney referred to such actions on the record during the hearing. Applicant has not met his burden of proof with regard to these allegations. Even if the Judge behaved as Applicant alleges, it is not clear why, as Applicant suggests, the Judge would have had to rely on Department Counsel to complete his decision, as he had a transcript of the proceedings. Furthermore, Applicant's own statement that Department Counsel "*may have had more influence*" (emphasis supplied) on the Judge's decision than would be proper is only speculation on Applicant's part with no evidence to support it.

Order

In the absence of harmful error, the Administrative Judge's decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: Chistine M. Kopocis

Christine M. Kopocis

Administrative Judge

Member, Appeal Board

Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

1. The statement of reasons is stamped January 6, 2004. There is some confusion, but the correct date appears to be January 6, 2005.