

DATE: October 5, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-26888

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

#### FOR APPLICANT

#### *Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 21, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guidelines K (Security Violations) and E (Personal Conduct), pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On March 30, 2006, after considering the record, Administrative Judge James A. Young 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 adverse clearance decision under Guidelines K and E is arbitrary, capricious, or contrary to law. Applicant argues that the Judge's adverse clearance decision should be reversed because the Judge failed to conclude as a matter of law, that Applicant's conduct had been mitigated. The Board does not find Applicant's argument persuasive.

Applicant contends that the Administrative Judge should have found that Applicant's conduct was mitigated because: (1) he lacked training or guidance on security requirements; (2) greater weight should have been given to the conclusion that his security violation was isolated or infrequent; (3) he learned from and regretted his mistakes; and (4) he was willing to attend training or take "other positive steps to reduce or eliminate his vulnerability to coercion, exploitation or duress." Applicant's contentions lack merit.

"Security violations are one of the strongest possible reasons for denying or revoking access to classified information, as they raise very serious questions about an applicant's suitability for access to classified information." ISCR Case No. 04-04264 at 3 (App. Bd. Sept. 8, 2006) (citing ISCR Case No. 97-0435 at 3-4 (App. Bd. July 14, 1998)). Once it is established that Applicant has committed a security violation, he has "a very heavy burden of demonstrating that [he] should be entrusted with classified information. Because security violations strike at the very heart of the industrial security program, an Administrative Judge must give any claims of reform and rehabilitation strict scrutiny." ISCR Case No. 00-0030 at 7 (App. Bd. Sept. 20, 2001). "In many security clearance cases, applicants are denied a clearance for having an indicator of a risk that they might commit a security violation (e.g., alcohol abuse, delinquent debts or drug use)." ISCR Case No. 04-04264 at 3 (App. Bd. Sept. 8, 2006). In this case, the Judge found more than an indicator of risk. Here the Judge found Applicant negligently disregarded in-place security procedures, and then actively attempted to conceal the security violations from an Industrial Security Representative of the Defense Investigative Service.

The "application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies 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." ISCR Case No. 04-08975 at 2 (App. Bd. Aug. 4, 2006) (citing ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003)). "Thus, the presence of some mitigating evidence does not alone compel the 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*." ISCR Case No. 04-11381 at 2 (App. Bd. Aug. 23, 2006). "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." ISCR Case No. 05-03939 at 2 (App. Bd. Sep. 1, 2006). "In this case, the Administrative Judge reasonably weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and circumstances, and considered the possible application of relevant mitigating conditions." ISCR Case No. 04-08975 at 2 (App. Bd. Aug. 4, 2006). The Judge "reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns." ISCR Case No. 04-11381 at 2 (App. Bd. Aug. 23, 2006). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines K and E is not arbitrary, capricious, or contrary to law.

### Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board