

DATE: August 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02030

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Joyce E. Peters, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 18, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 23, 2006, after the hearing, Administrative Judge Thomas M. Crean denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. [\(1\)](#)

Applicant raised the following issues on appeal: whether the Administrative Judge's findings are supported by substantial evidence; whether the Administrative Judge erred in concluding Applicant's falsification of her security clearance application was deliberate; whether the Administrative Judge's unfavorable clearance decision under Guidelines E is arbitrary, capricious, or contrary to law.

(1) Applicant argues that the Administrative Judge's adverse findings are not supported by substantial evidence. The Board does not find this argument persuasive.

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, (1966). In evaluating the Administrative Judge's finding, we are required to give deference to the Administrative Judge's credibility determinations. Directive ¶ E3.1.32.1.

The findings which Applicant complains about are permissible characterizations of the record evidence on the part of the Administrative Judge. The Administrative Judge's material findings with respect Applicant's conduct of security concern reflect a reasonable or plausible interpretation of the record evidence. The Board does not review a case *de novo*. Considering the record evidence as a whole, the Board sustains the Judge's material findings of security concern because they are supported by substantial evidence.

(2) Applicant argues that she did not deliberately falsify her security clearance application by failing to disclose adverse

information of security concern in response to four different questions covering two different subject matters. She contends that the omission of the information in question was inadvertent, unintentional or the result of a mistake. The Board does not find this argument persuasive.

The Administrative Judge had the opportunity to consider Applicant's explanation for why she failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omissions were deliberate and intentional. Accordingly, we sustain the Judge's findings of deliberate, intentional falsification. *See* Directive ¶ E3.1.32.1.

(3) Applicant argues that the Administrative Judge's unfavorable decision under Guideline E is arbitrary, capricious and contrary to law because the Judge failed to consider the record as a whole, mis-weighed the evidence, and misapplied the mitigating conditions and whole-person factors. The Board does not find this argument persuasive.

The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them apply 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. *See, e.g.*, 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*. Applicant asserts that the Judge failed to discuss or give sufficient weight to numerous facts that tend to minimize Applicant's culpability. A Judge is not required to mention or discuss each piece of record evidence. ISCR Case No. 04-08134 at 3 (App. Bd. May 16, 2005). There is rebuttable presumption that a Judge "considered all the record evidence, unless the Judge specifically states otherwise." *Id.* 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.

A review of the decision indicates that the Administrative Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. The Judge found in favor of the Applicant under Guideline F. However, the Judge articulated a rational basis for not favorably applying any mitigating conditions or whole-person factors under Guideline E, and reasonably explained why the evidence Applicant had presented in mitigation was insufficient to overcome the government's security concerns. Given the record that was before him, the Judge's unfavorable clearance decision under Guideline E is not arbitrary, capricious or contrary to law.

Order

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

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant under Guideline F. That favorable finding is not at issue on appeal.