

DATE: October 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04324

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 May 16, 2005, DOHA issued a statement of reasons (SOR) 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 May 12, 2006, after considering the record, Administrative Judge Marc E. Curry 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 erred by concluding that the security concerns raised under Guideline F had not been mitigated. [\(1\)](#)

Applicant argues that the Administrative Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant mitigating evidence, which he contends demonstrates that his financial problems were not recent and due to circumstances beyond his control. He also argues that he has now controlled his spending and made a good faith effort to pay his debts. In support of his argument, Applicant offers documentary evidence which indicates that subsequent to the Judge's decision Applicant received financial counseling and he has now paid off all but one of his outstanding debts. The Board does not find Applicant's arguments persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. And such evidence does not demonstrate error on the part of the Administrative Judge.

The Applicant has not met his burden of demonstrating that the Administrative Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

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. *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*. 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.

In this case, the Administrative Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had significant outstanding debts. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. Moreover, the Board has previously noted that it is reasonable to expect applicants to have documentation about efforts to satisfy specific debts. *See* ISCR Case No. 03-23511 at 2 (App. Bd. Feb. 15, 2006). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. The Judge found in favor of the Applicant with respect to several of the factual allegations. However, the Judge articulated a rational basis for not fully applying any mitigating conditions in this case, and reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines F is 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: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in Applicant's favor with respect to SOR paragraphs 1.b, 1.c, 1.h, and 1.i. Those favorable findings are not at issue on appeal.