

DATE: December 8, 2006

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 04-04623

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 24, 2005, 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 25, 2006, after the hearing, Administrative Judge Shari Dam 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 Applicant was denied effective assistance of counsel;⁽¹⁾ and whether the Administrative Judge erred in concluding that the financial concerns in his case had not been mitigated.

Applicant argues that the Administrative Judge's adverse decision should be reversed or remanded because Applicant's attorney did not adequately represent him during the proceeding below. Specifically, Applicant contends that he did not begin payment on his delinquent debts until after receipt of the SOR because he had been advised by his attorney, who was unfamiliar with the security clearance process, that he did not need to pay the debts.⁽²⁾ As a result, Applicant would like an opportunity to rectify the situation rather than being penalized for being unfairly represented. The Board cannot grant Applicant the relief he seeks.

The actions or inactions of Applicant's counsel during the proceedings below do not provide a basis for the Board to conclude that the Administrative Judge's decision should be reversed or remanded. DOHA proceedings are civil in nature and the ineffective assistance of counsel doctrine does not apply to them. *See, e.g.*, ISCR Case No. 98-0515 at 3 (App. Bd. Mar. 23, 1999); ISCR Case No. 96-0127 at 2 (App. Bd. July 29, 1997). Even if the Board were to assume, solely for the sake of discussion, that Applicant's appeal assertions are correct, Applicant's remedy, if any, would be in another forum.

Applicant has not met his burden of demonstrating that the Administrative Judge erred in concluding that the financial considerations allegations had not been mitigated. Applicant pointed out that he paid about \$700 of debt after finding out in 2005 that his security clearance was in jeopardy. The Judge stated in her decision that Applicant had paid the \$700 and found in Applicant's favor as to the corresponding debts; but the Judge found that payment of that amount was alone not sufficient to constitute a good-faith effort to settle Applicant's financial difficulties so as to support a finding

of mitigation. 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 Board does not review a case *de novo*. Given the record that was before her, 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 under Guideline E. That favorable finding is not at issue on appeal.

2. Applicant's brief contains assertions about matters that go outside the record evidence. The Board may not consider this new evidence on appeal. *See* Directive ¶ E3.1.29. And such evidence does not demonstrate error on the part of the Judge.