

DATE: April 4, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05268

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 19, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Concerns) and Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended. Applicant requested a hearing. On January 30, 2006, after the hearing, Judge Elizabeth . Matchinski denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.29.

Applicant raised the following issues on appeal: whether he may submit new evidence regarding his improved financial position, since, in his view, he was not given sufficient time to satisfy the negative debt information; whether the Administrative Judge erred in finding that Applicant intentionally falsified his security clearance application; and whether the Judge gave sufficient weight to his work performance and commendations.

At the hearing, Applicant stated that he did not realize the state of his finances until he received the statement of reasons dated October 19, 2004. The hearing was held August 10, 2005. The Judge held the record open until August 26, 2005, so that Applicant could submit documentation regarding his efforts to improve his financial position prior to the hearing and his financial position at the time of the hearing. The Judge asked Applicant if he would be able to collect the documentation and submit it by August 26, and he indicated he could do it by then. The Judge indicated in her decision that Applicant timely submitted four documents. No new evidence can be considered on appeal. *See* Directive ¶ E3.1.29. Furthermore, as a practical matter, there must be finality to any judicial or administrative proceeding, and there is no general legal right to supplement the record evidence. *See, e.g.,* ISCR Case No. 03-17114 at p. 3 (App. Bd. Nov. 29, 2004). Applicant has not demonstrated error in this regard.

On appeal Applicant asks for another opportunity to present his case in front of "Appeal Judge." The Board construes Applicant's statement as raising the issue of whether he should be allowed another hearing. Applicant had a hearing before an Administrative Judge. During the hearing, Applicant had the opportunity to present evidence on his own behalf. Applicant is not entitled to another hearing unless he shows that he was denied a reasonable opportunity to prepare for the hearing, or was denied a reasonable opportunity to present evidence on his behalf. *See, e.g.,* ISCR Case No. 02-20403 at 4 (App. Bd. Apr. 7, 2003).

Applicant testified that he did not intentionally falsify his security clearance application when he neglected to provide information about debts 90 and 180 days past due. The Judge had a duty to consider that testimony as part of the record evidence, but she did not have to accept it at fact value. Applicant has not demonstrated error on the part of the Judge on this issue. Applicant's equating of the Judge's denial of his security clearance with punishment for the falsification of his application is without merit, and the effect of the denial on his career is not a matter for consideration in a security clearance adjudication.

Regarding Applicant's argument on his work record, there is a presumption that the Administrative Judge considered all the record evidence. The fact that Applicant would have weighted the evidence differently is not indicative of error by the Judge. Moreover, Applicant's favorable job performance does not demonstrate the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. An applicant with good job performance may engage in off-duty conduct that has negative security implications. *See, e.g.*, ISCR Case No. 99-0462 at 5 (App. Bd. May 25, 2000). Evidence of an applicant's good job performance does not preclude a Judge from considering the security significance of an applicant's off-duty conduct and circumstances. In this case, Applicant's history of financial difficulties and personal conduct has negative security significance that is not negated by Applicant's job performance.

Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board