

DATE: August 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06248

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 17, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On March 15, 2006, after considering the record, Chief Administrative Judge Robert Robinson Gales denied Applicant's request for a security clearance. ⁽¹⁾ 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 E is arbitrary, capricious or contrary to law.

Applicant argues that the Administrative Judge's adverse clearance decision should be reversed because it is based upon erroneous findings derived from a neglectful investigation that did not thoroughly and completely acquire proper information regarding her employment history. Applicant also argues she did not deliberately or intentionally make false statements on her security clearance application. The Board does not find Applicant's arguments persuasive.

The methods and scope of Defense Security Service investigations are outside the scope of review of the Appeal Board. *See e.g.* ISCR Case No. 99-0293 at 4 (App. Bd. May 5, 2000). The Administrative Judge is not responsible for gathering evidence for the benefit of either party. DOHA proceedings are adversarial in nature and each party is responsible for gathering and presenting evidence for the Judge to consider. *See, e.g.*, Directive ¶¶ E3.1.14 and E3.1.15. The Judge has the responsibility to exercise reasonable control over the development of the record evidence by the parties to ensure that a case proceeds in a fair, timely, and orderly manner. *See, e.g.*, ISCR Case No. 00-0628 at 3-4 (Apr. 26, 2002). A review of the proceedings below persuades the Board that Applicant was placed on reasonable notice that she was responsible for presenting evidence on her behalf, and that the Judge would base his decision on record evidence presented by the parties for his consideration. Applicant did not file a timely response to the government's file of relevant material. She cannot fairly claim that the Judge was obligated to consider information that had not been presented to him. *See, e.g.*, ISCR Case No. 02-09209 at 3-4 (App. Bd. June 9, 2004).

The findings which Applicant challenges are permissible characterizations by the Administrative Judge of the evidence that was before him. Applicant has not met her burden of demonstrating that the Judge's material findings with respect Applicant's conduct of security concern do not 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 Judge's material findings of security concern are sustainable.

Applicant's statements about her intent and state of mind when she executed her security clearance application were relevant evidence, but they

were not binding on the Administrative Judge. *See, e.g.*, ISCR Case No. 01-19278 at 6-7 (App. Bd. Apr. 22, 2003). As the trier of fact, the Judge had to consider Applicant's statements in light of the record evidence as a whole, and Applicant's denial of any intent to provide false information did not preclude the Judge from weighing the record evidence and making findings that contradicted Applicant's denials. The security concerns raised by Applicant's falsification were not necessarily mitigated by Applicant's subsequent disclosures to the government. *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004).

In this case, the Judge weighed the evidence that was presented to him, evaluated the seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions and whole person factors. The Judge found in Applicant's favor with respect to most of the SOR allegations. However, the Judge reasonably explained why the evidence which was before him was insufficient to overcome the government's security concerns. Given the record

that was before him, the Judge's ultimate 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: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant with respect to SOR paragraphs 1.a.(2) and 1.b. Those favorable findings are not at issue on appeal.