

DATE: August 9, 2006

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 04-07831

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 June 17, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under and Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 8, 2006, after the hearing, Administrative Judge Darlene Lokey Anderson 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's unfavorable clearance decision under Guidelines G and J is arbitrary, capricious, or contrary to law.

Applicant argues that the Administrative Judge's adverse clearance should be reversed because Applicant's last criminal offense occurred in 2000 and he quit drinking in that year. He further argues that he has since completed an outpatient alcohol program, refrained from abusing alcohol, returned to and completed his schooling, and has otherwise demonstrated changed circumstances and rehabilitation. Applicant also asserts that although he admitted in his answer to consuming alcohol in excess and to the point of intoxication from 1999 to March 15, 2004, it was error for the Judge to make such a finding considering his testimony at the hearing. Given the record of this case, the Board does not find these arguments persuasive.

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 Applicant had a lengthy and serious history excessive alcohol consumption that included six alcohol related criminal offenses between 1989 and 2000. She also found Applicant had been charged

with twelve non-alcohol related offenses, some of which had ultimately been dismissed. Finally, the Judge found that although Applicant had completed a two-year alcohol treatment program between 2000 and 2002, he continues to consume alcohol and has not been able to remain alcohol free for any extended period of time. The Judge's material findings of security concern are sustainable. Her conclusions are also sustainable. 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. She 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*. Given the record that was before her, the Judge's ultimate unfavorable clearance decision under Guidelines G and J 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

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board