

DATE: February 20, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08867

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Thomas R. Present, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 20, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On ay 31, 2006, after the hearing, Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. [\(1\)](#)

Applicant raised the following issue on appeal: whether the Judge's unfavorable clearance decision under Guideline E is arbitrary, capricious, or contrary to law.

In this case, the Judge made sustainable findings that Applicant had omitted material information of security concern relating to his possession of a Lebanese passport from his response to question 15 of security clearance applications electronically submitted in January 2003, September 2003, and January 2004, and a security clearance application executed in October 2004. The Judge also made sustainable findings that Applicant had omitted material information of security concern relating to his 1997 travel to Kuwait and Lebanon in response to question 16 of security clearance applications electronically submitted in January 2003, September 2003, and January 2004. The Judge concluded that Applicant's omissions did not rise to the level of deliberate falsifications under Disqualifying Condition 2, [\(2\)](#) because Applicant had relied in part on erroneous advice from his facility security officer (FSO) that he did not need to disclose the information concerning his Lebanese passport. However, the Judge went on to conclude that Applicant had exercised questionable judgement in relying on the advice of his FSO, given the clear wording of question 15, and that Applicant's multiple omissions constituted poor judgement under the general security concern for Guideline E. In that regard, the Judge's adverse conclusion was based upon an extensive analysis of Applicant's conduct under the "whole person" factors. [\(3\)](#) On appeal, Applicant contends the Judge's unfavorable clearance decision is arbitrary, capricious, and contrary to law because Applicant's conduct did not fall under any of the Guideline E Disqualifying Conditions. The Board does not find this argument persuasive.

Although a Judge must apply pertinent disqualifying and mitigating conditions, the Judge is not required to do so in a rigid, mechanical manner. Furthermore, because the conditions do not exhaust the realm of human experience or the

kinds of conduct or circumstances that are pertinent to evaluating an applicant's security eligibility, the mere presence or absence of any particular disqualifying or mitigating condition is not dispositive of a case. Finally, a Judge acts properly by evaluating an applicant's case under the "whole person" factors of the Directive. *See, e.g.*, ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004). Accordingly, it was not arbitrary, capricious, or contrary to law for the Judge to evaluate Applicant's security eligibility under the Guideline E's general concern, despite the Judge's conclusion that none of the Guideline's disqualifying conditions applied.

A review of the decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant disqualifying, mitigating, or "whole person" factors. The Judge found in favor of the Applicant with respect to most of the allegations. However, the Judge articulated a rational basis for not favorably applying the relevant "whole person" factors under Guideline E, and reasonably explained why the evidence Applicant had presented in mitigation was insufficient to overcome the government's security concerns. Given the record that was before him, the Judge's unfavorable clearance decision under Guideline E is not arbitrary, capricious or contrary to law.

Order

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

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, 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

1. The Administrative Judge found in favor of Applicant under Guidelines B and C, and with respect to ¶ 3.d. Those favorable findings are not at issue on appeal.
2. Directive ¶ E2.A5.1.2.2.
3. Directive ¶¶ E.2.2.1 through E.2.2.9.