

DATE: August 4, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08975

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 14, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 3, 2006, after the hearing, Administrative Judge Michael J. Breslin 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 unfavorable clearance decision under Guideline G is arbitrary, capricious or contrary to law.

Applicant argues that the Administrative Judge's adverse clearance should be reversed because Applicant had been alcohol free since 2004. Given the record of this case, the Board does not find this argument 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 Administrative 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 made sustainable findings as to a lengthy and serious history excessive alcohol consumption that included diagnoses for alcohol dependence and alcoholism. ⁽²⁾ 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. The Judge found in Applicant's favor with respect to one of the factual allegations. However, the Judge reasonably explained why the evidence which the Applicant had presented in mitigation 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 G is not arbitrary, capricious or contrary to law.

Finally, Applicant argues that an unfavorable decision will adversely impact his employment situation. The possibility that an unfavorable security clearance decision could have adverse consequences for an applicant's job situation is not relevant or material to an evaluation of the security significance of that applicant's conduct. *See, e.g.*, ISCR Case No. 02-11570 at 8 (App. Bd. May 19, 2004).

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

Michel D. Hipple

Michael D. Hipple

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 with respect to SOR paragraph 1.g. That favorable finding is not at issue on appeal.

2. Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1964 to 2004. He received treatment on four occasions for alcoholism or alcohol dependence, in 1994, 2002, and twice in 2003. In 2000, he pled guilty to a Driving Under the Influence charge.