

DATE: August 17, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-08934

## 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 January 14, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). Applicant requested a hearing. On February 24, 2006, after the hearing, Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. [\(U\)](#) 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 J and E is arbitrary, capricious, or contrary to law.

Applicant argues that the Administrative Judge's adverse clearance decision should be reversed because the Applicant did not deliberately falsify a material fact on her September 23, 2002, Security Clearance Application. Rather, it is Applicant's contention that she had not listed the 1996 arrest charge in question because she did not consider it to be an arrest, and she had forgotten about it. The Board does not find Applicant's arguments persuasive. Applicant was in fact arrested, taken to a police station, and fingerprinted. She was found guilty of theft and received a fine.

The Administrative Judge's material findings with respect to Applicant's conduct reflect a 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 overcome by Applicant's subsequent disclosures to the government. *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004). Similarly, such concerns were not necessarily overcome by Applicant's favorable professional and work record. *See, e.g.*, ISCR Case No. 01-01642 at 6 (App. Bd. June 14, 2002).

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 Judge weighed the mitigating evidence offered by Applicant against 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 several of the SOR 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 Guidelines J and E is not arbitrary, capricious or contrary to law.

Finally, Applicant argues that an unfavorable decision will adversely impact her 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: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: Mark W. Harvey

Mark W. Harvey

Administrative Judge

Member, Appeal Board

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