

DATE: January 17, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09248

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, 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 7, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct) and 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 June 23, 2006, after considering the record, Administrative Judge Marc E. Curry 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 Administrative Judge erred by concluding that the security concerns raised under Guidelines F and E had not been mitigated.

Applicant argues that the Administrative Judge erred in concluding that the security concerns raised under Guideline E had not been mitigated, because in the two years since he began his current employment he has not mishandled classified information. Applicant also argues that the Judge erred in concluding that the security concerns raised Guideline F had not been mitigated, because Applicant has established a repayment plan and is making regular payments to his creditors on his debts. Applicant's arguments do not demonstrate that the Judge erred.

The Administrative Judge made sustainable findings that Applicant had provided false information in the response to four questions on his 2003 Security Clearance Application, that Applicant had a security clearance revoked for failure to respond in 2001, and that Applicant was discharged from the U.S. Army with a General Discharge for a Pattern of Misconduct in 2003. Those findings provide a sufficient rational basis for the Judge's unfavorable security clearance decision under Guideline E. *See, e.g.*, ISCR Case No. 04-12548 at 2-3 (App. Bd. Sep. 18, 2006). The Directive presumes there is a nexus or rational connection between proven conduct under any of its Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 02-28935 at 3-4 (June 28, 2005). The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *See Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980). The absence of security violations does not bar or preclude an adverse security clearance decision. *See* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005).

The Administrative Judge also made sustainable findings that Applicant had a lengthy history of not meeting financial

obligations, that Applicant had previously had a substantial amount of indebtedness discharged in bankruptcy, and that Applicant had only established his current repayment plan subsequent to the initiation of the security clearance process. In light of the foregoing, the Judge could reasonably conclude that the security concerns raised by Applicant's financial problems had not been mitigated. *See, e.g.*, ISCR Case No. 03-10880 at 5 (App. Bd. June 24, 2005); ISCR Case No. 03-13768 at 4 (App. Bd. June 16, 2005).

The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply 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.

The Administrative 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. He found in Applicant's favor with respect to some of the allegations, but reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all the government's security concerns. The Board does not

review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines F and E is sustainable.

Order

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

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

Signed: David M. White

David M. White

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of Applicant under Guideline J and with respect to paragraph 3.c under Guideline E. Those favorable findings are not at issue on appeal.

