

DATE: July 6, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09684

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 20, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 23, 2006, after the hearing, Administrative Judge Joseph Testan granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Administrative Judge's favorable clearance decision under Guidelines F is arbitrary, capricious or contrary to law.

Department Counsel argues that the Administrative Judge erred in his application of Guideline F Mitigating Conditions 1, [\(1\)](#) 3 [\(2\)](#) and 6. [\(3\)](#) The Board does not find Department Counsel's argument persuasive.

In this case, the Administrative Judge made the following sustainable findings: Applicant had paid off two of the three debts alleged in the SOR, totaling approximately \$28,000, prior to the invocation of the security clearance process. He still had not paid off the third debt of approximately \$10,000. This latter debt was for the balance owed on the voluntary return of his leased vehicle prior to the end of the contract period. Applicant disagrees as to that amount and is still in the process of trying to negotiate a lower amount. Applicant's financial problems were due in part to the loss of employment as a result of the terrorist acts of September 11, 2001, and his failure to anticipate and prepare for the significant tax implications of receiving an early distribution from his employer's stock/savings account. None of Applicant's recent debts have gone delinquent, and he now has the ability to satisfy his remaining debt.

Given the record in this case, Department Counsel has not demonstrated it was arbitrary capricious, or contrary to law for the Administrative Judge to give Applicant some credit for the mitigating evidence he produced under Guideline F Mitigating Condition 1.

Department Counsel's argument concerning Guideline F Mitigating Condition 3 is premised on the notion that an Administrative Judge cannot apply that mitigating condition unless the applicant demonstrates that the debts at issue became delinquent as a direct result of the circumstances beyond applicant's control. The Board has previously noted

that a Judge is not required to interpret Mitigating Condition 3 so narrowly. *See, e.g.*, ISCR Case No. 03-17479 at 4 (App. Bd. Nov. 3, 2005). Given the wording of that mitigating condition, it is not unreasonable for a Judge to construe it as covering a situation where the record evidence shows that events beyond an applicant's control resulted in, or significantly contributed to the applicant's debts becoming delinquent, the applicant becoming unable to deal with or otherwise address debts that had become delinquent previously, and the applicant incurring new, unforeseen debts that aggravate or exacerbate the applicant's financial situation. Given the record in this case, Department Counsel has not demonstrated it was arbitrary capricious, or contrary to law for the Judge to give Applicant some credit for the mitigating evidence he produced under Mitigating Condition 3.

The Administrative Judge made sustainable findings that Applicant had established a plan to resolve his financial problems and taken significant actions to implement that plan. Applicant was not required, as a matter of law, to establish that he had completely paid off his indebtedness. Given the record in this case, Department Counsel has not demonstrated it was arbitrary, capricious, or contrary to law for the Judge to give Applicant some credit for the mitigating evidence he produced under Mitigating Condition 6.

Department Counsel is essentially arguing that the record evidence shows that Applicant was not as diligent about dealing with his financial problems as he could have been. However, the unfavorable record evidence cited by Department Counsel is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. As the trier of fact, the Judge had to weigh the evidence as a whole and decide whether the favorable evidence outweighed the unfavorable evidence, or *vice versa*. Department Counsel's disagreement with the Judge's weighing of the record evidence is not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. In this case, Applicant had paid off the majority of his indebtedness prior to the invocation of the security clearance process and there is evidence that he initiated a good-faith effort to settle the remaining debt. Also, he demonstrated a substantial improvement in his financial position. The Board need not agree with the Judge's decision under Guideline F to conclude that it is sustainable.

Order

The decision of the Administrative Judge granting 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. Directive ¶ E2.A6.1.3.1. "The behavior was not recent."

2. Directive ¶ E2.A6.1.3.3. "The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)."

3. Directive ¶ E2.A6.1.3.6 ("The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts").