

DATE: July 6, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10340

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 24, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)(Directive). Applicant requested a hearing. On January 24, 2006, after the hearing, Administrative Judge Barry M. Sax denied Applicant's request for a security clearance. 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 Guidelines C and B is arbitrary, capricious or contrary to law.

Applicant contends that the Administrative Judge's unfavorable clearance decision should be reversed because the Judge improperly placed the burden of proving refutation, mitigation or extenuation of the government's security concerns upon the Applicant, even though the Applicant had not engaged in any misconduct. He also contends the Judge improperly weighed the evidence. In support of the latter contention, the Applicant essentially reargues his case, pointing to a number of favorable circumstances which Applicant believes the Judge should have found sufficient to overcome the government's security concerns. ⁽¹⁾ The Board does not find Applicant's arguments persuasive.

The Applicant had the burden of presenting evidence to rebut, explain, extenuate or mitigate facts that the Department Counsel proved or that Applicant admitted regarding his family and legal ties to Egypt, and the Applicant also had the ultimate burden of persuasion as to obtaining a favorable security clearance decision. Directive ¶ E3.1.15. The Administrative Judge had to consider the record evidence as a whole, both favorable and unfavorable, evaluate Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide whether Applicant had met his burden of persuasion under Directive ¶ Item E3.1.15.

There is a rebuttable presumption that the Administrative Judge considered all of the evidence presented. *See, e.g.*, ISCR Case No. 99-9020 at 2 (App. Bd. Jun. 4, 2001). The fact that Applicant's explanations and his mitigating evidence did not lead the Judge to the decision desired by Applicant does not establish error. 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.

A review of the Judge's decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances, and considered the possible application of relevant mitigating conditions and factors. The Judge articulated a rational basis for not favorably applying any mitigating conditions or factors and 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 C and B is not arbitrary, capricious or contrary to law.

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 (Acting), Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. ⁰Applicant notes that he has lived in the U.S. for 36 years, he has four children here, owns a house and substantial assets, has a brother who is a retired U.S. Navy Captain, and has worked in the defense industry for 21 years.