

DATE: August 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11381

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 August 5, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 30, 2006, after the hearing, Administrative Judge Charles D. Ablard 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 G and J is arbitrary, capricious, or contrary to law. [\(1\)](#)

Applicant argues that the Administrative Judge's unfavorable decision should be reversed because her alcohol related problems are not recent, she has since demonstrated positive changes in behavior supportive of sobriety and rehabilitation, and her current level of alcohol consumption is not of security concern. The Board does not find Applicant's arguments 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 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 that Applicant had consumed alcohol, at times in excess and to the point of intoxication, from approximately 1993 to at least July 2004. Applicant had been involved in driving while intoxicated incidents in 1998 and 2004, and had continued to consume alcohol subsequent to treatment for alcohol dependence in 2004. 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 and

whole person factors. He found in favor of the Applicant with respect to many of the allegations in the SOR. However, the Judge articulated a rational basis for applying the relevant disqualifying conditions and for not favorably applying any mitigating conditions or whole person factors with respect to the Guideline G and J allegations. He 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 those two guidelines is not arbitrary, capricious, or contrary to law.

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 the Applicant under Guidelines H and E. Those favorable findings are not at issue on appeal.