

DATE: September 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03482

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 13, 2005, DOHA issued a statement of reasons (SOR) 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 his case be decided on the written record. On March 28, 2006, after considering the record, Administrative Judge Mary E. Henry 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 adverse clearance decision under Guideline F is arbitrary, capricious, or contrary to law.

Applicant argues that the Administrative Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant mitigating evidence which he contends demonstrates that he has controlled his spending and made a good faith effort to pay his debts. In support of his argument, Applicant offers new evidence in the form of additional statements updating his financial situation. The Board does not find Applicant's arguments persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Accordingly, we may not consider Applicant's explanations, and they do not demonstrate error on the part of the Judge.

The Applicant has not met his burden of demonstrating that the Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, he has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

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 reasonably weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and circumstances, and considered the possible application of relevant mitigating conditions. 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 her, the Judge's ultimate unfavorable clearance decision under Guideline F 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, 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