

DATE: September 1, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-03939

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) proposed to deny or revoke access to automated information systems in ADP-I and ADP-II sensitivity positions for Applicant. On September 9, 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 E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 3, 2006, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant's request for a trustworthiness designation. 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 Guidelines F, E and J is arbitrary, capricious or contrary to law.

Applicant argues that the Administrative Judge erred in her application of the whole person concept. It is his contention that the Administrative Judge's adverse decision under Guideline F should be reversed because he has been current on his accumulated debts since he has been more gainfully employed at a higher salary, and his financial situation is improving. Applicant also contends that the Judge's adverse decision under Guidelines E and J should be reversed because his falsification was an isolated incident, he subsequently disclosed the omitted information, and he has highly favorable character and professional references. The Board does not find Applicant's arguments persuasive.

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.

In this case, the Administrative Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct, and considered the possible application of relevant mitigating conditions and whole person

factors. The Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The security concerns raised by Applicant's falsification were not necessarily mitigated by Applicant's subsequent disclosures to the government. *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004). Similarly, such concerns were not necessarily mitigated by Applicant's favorable professional and work record. *See, e.g.*, ISCR Case No. 01-01642 at 6 (App. Bd. June 14, 2002). Finally, the security concerns raised by Applicant's financial history were not necessarily mitigated by the fact that he is current on his new debts and has shown some improvement in his financial situation. *See, e.g.*, ISCR Case No. 02-18418 at 3-4 (App. Bd. Nov. 30, 2005). The Board does not review a case *de novo*. Given the record that was before her, the Judge's ultimate unfavorable clearance decision under Guidelines F, E and J 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