

DATE: February 6, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-06602

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 30, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On June 23, 2006, after considering the record, Administrative Judge Jacqueline T. Williams 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 issues on appeal: whether the Judge's finding that one of Applicant's creditors had obtained a judgment against Applicant was erroneous; whether the Judge erred by concluding that the security concerns raised under Guideline F had not been mitigated; whether the Judge erred in concluding Applicant's falsification of her security clearance application was deliberate.

(1) Applicant asserts that the Judge erred by finding that Applicant had two unpaid judgments against her. She then stated that one of the alleged judgments from an apartment complex was, for various reasons, not a judgment. Applicant has failed to establish error on the part of the Judge.

Applicant's explanations concerning the alleged judgment constituted evidence that the Judge was required to consider. However, the Judge was not required to view Applicant's uncorroborated assertions as conclusive. The record evidence in this case included two credit reports, both of which listed a judgment from the apartment complex in like dollar amounts. Given this record, the Judge's finding regarding the apartment complex judgment is sustainable.

(2) Applicant contends that the Judge erred in concluding that the security concerns raised by her history of financial difficulties had not been mitigated. In support of that contention, Applicant essentially restates the evidence she presented in her Answer to the SOR and her response to the government's File of Relevant Material (FORM), and argues that she has paid off or is making payments on the debts alleged in the SOR. Applicant also argues that the Judge's adverse decision under Guideline F should be reversed because it is contrary to another DOHA Hearing Office decision in which an applicant in ostensibly similar circumstances was granted a clearance. The Board does not find these arguments persuasive.

The decision in another DOHA Hearing Office case does not demonstrate error by the Judge in this case. A decision by a Hearing Office Judge is not legally binding precedent on that Judge's colleagues and or the Board. *See* ISCR Case No. 01-22606 at 3-5 (App. Bd. Jun. 30, 2003).

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. *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 Judge found that Applicant had a lengthy history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had outstanding debts of significant amounts and had not corrected underlying factors that had contributed to her financial problems. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See, e.g.*, ISCR Case No. 04-08824 at 2 (App. Bd. Nov. 16, 2006); ISCR Case No. 03-26213 at 2 (App. Bd. Aug. 23, 2006). 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. The Judge reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). Given the record that was before her, the Judge's ultimate unfavorable clearance decision under Guideline F is sustainable.

(3) Applicant also argues that she did not deliberately falsify her security clearance application by failing to disclose adverse information of about her indebtedness. The Board does not find this argument persuasive.

The Judge had the opportunity to consider Applicant's explanation for why she failed to disclose the information in question. The Judge was not bound, as a matter of law, to accept or reject Applicant's explanation. The Judge considered Applicant's explanation in light of the record evidence as a whole, and concluded there was a sufficient basis to find that Applicant's omission was deliberate and intentional. On this record, the Judge's findings of deliberate falsification are sustainable. *See* Directive ¶ E3.1.32.1. The Judge's unfavorable security clearance decision under Guideline E is also sustainable.

### **Order**

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board