

DATE: February 27, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-16017

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 28, 2006, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline J (Criminal Activity) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended (Directive)). Applicant requested a hearing. On July 17, 2006, after the hearing, Administrative Judge Michael J. Breslin denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

The Board construes Applicant's appeal as raising the following issue: that the Judge's decision is arbitrary, capricious, and contrary to law.

The Judge found that Applicant served as an enlisted member of the U.S. Army. While on active duty, Applicant went absent without leave on three separate occasions, resulting in nonjudicial punishment under 10 U.S.C. § 815, a general court-martial, and an administrative discharge respectively. In addition, the Judge found that following his discharge from the Army, Applicant killed his former girlfriend by strangulation. He was convicted by the State of Illinois of voluntary manslaughter and served five and one-half years of confinement. The Judge concluded that Applicant's case falls within the scope of 10 U.S.C. § 986(c)(1) (the Smith Act), which prohibits the Department of Defense from granting a security clearance to any person convicted by a U.S. court who served at least one year of confinement.

The Judge's findings of fact are sustainable based on the record evidence. The Judge's conclusions follow rationally from his findings of fact. Thus, the Administrative Judge did not err in denying Applicant a clearance.

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: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board