

DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

January 28, 2008

David Price, Esq.
(Previous Law Firm Address)
Virginia Beach, VA

Re: XXXXX, XXXXXX XXXXX
ISCR Case No. 06-20413

Dear Mr. Price:

The Appeal Board has affirmed the Administrative Judge's favorable decision, dated August 30, 2007. This constitutes the final decision under DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program. A copy of the Appeal Board's decision is enclosed. The Director, Defense Office of Hearings and Appeals will notify the Defense Industrial Security Clearance Office (DISCO) of this decision. DISCO will notify your client's employer of this decision, as appropriate.

Sincerely,

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Enclosure

cc: Director, DOHA
Chief Department Counsel

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DATE: JAN 28 2008

InRe:)
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XXXXXX, XXXXX XXXXX) ISCR Case No. 06-20413
)
)
)
Applicant for Security Clearance)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 8, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 30, 2007, after the hearing, Administrative Judge Jacqueline T. Williams granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive -- E3 .I .28 and E3.I.30. 1

The Judge found in favor of Applicant under Guideline E. That favorable finding was not appealed by Department Counsel.

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Exemption 6 applies

Department Counsel raised the following issue on appeal: whether the Judge's application of Guideline G Mitigating Condition 23 (b)2 is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following relevant findings: Applicant is 37 years old and works as a network engineer for a defense contractor. He was involved in multiple alcohol-related incidents between 1990 and 2003. Applicant was found guilty of driving while intoxicated in 1990, 1994, and 1995. He was found guilty of reckless driving in 2000. Applicant's alcohol-related charges in 1995 and 2003 were either dismissed or resulted in not guilty findings. The 2003 incident involved a serious accident in which Applicant survived a near death experience. As a result, Applicant ceased drinking alcohol completely from October 2003 to February 2005. Since 2005 he has consumed a glass of wine on several occasions but has not been drunk or otherwise impaired. Character references who were aware of his past alcohol abuse attested to his professionalism, integrity, and reliability, or to his favorable life style changes and responsible approach to alcohol since the 2003 incident.

In deciding favorably for Applicant under Guideline G, the Judge concluded that Applicant's conduct since the 2003 accident established a pattern of responsible alcohol use. That conclusion is consistent with a reasonable interpretation of the record evidence and is not arbitrary, capricious, or contrary to law. There was no evidence that Applicant had ever been diagnosed as alcoholic or alcohol dependent and received a recommendation to totally abstain from using alcohol. Nor was there any evidence that Applicant currently consumes alcohol in excess or to the point of intoxication. On the contrary, the record evidence indicated that since the 2003 incident Applicant had a total of only four or five glasses of wine, of which two glasses were at a single setting.³ See, e.g., ISCR Case No. 03-12237 at 5 (App. Bd. Jul. 25, 2006).

Department Counsel offers a plausible alternative interpretation of the record evidence. However, that alternative interpretation of the record evidence is of no moment. The Board does not review a case *de novo*. A party'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. See ISCR Case No. 06-08116 at 2 (App. Bd. Jul. 2, 2007).

²"[T]he individual acknowledges his or her alcoholism or issue of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)."

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Order

The decision of the Judge granting Applicant a security clearance is AFFIRMED.

Jean E. Samllin
Administrative Judge
Member, Appeal Board

William S. Fields
Administrative Judge
Member, Appeal Board

James E. Moody
Administrative Judge
Member, Appeal Board

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