

DATE: March 21, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0248

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey Anderson issued a decision, dated November 28, 2000, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 19, 2000 to Applicant. The SOR was based on Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Applicant submitted an answer to the SOR in which he indicated he wanted a decision made in his case without a hearing. A File of Relevant Material (FORM) was prepared and a copy of it was given to Applicant. Applicant submitted a response to the FORM and the case was then assigned to the Administrative Judge for disposition.

The Administrative Judge issued a written decision, dated November 28, 2000, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Applicant's appeal from the Judge's adverse decision.

Appeal Issue

On appeal, Applicant argues: (1) the Administrative Judge erred by finding that he took various remedial financial steps only after he filed for the Chapter 13 bankruptcy; (2) the Judge should not have commented adversely on the fact that Applicant has a monthly remainder of \$160 after he has paid all his monthly expenses; and (3) it is not fair to judge his security eligibility based on the conduct of his wife. The Board construes Applicant's arguments as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

For the most part, Applicant does not challenge the Administrative Judge's findings about Applicant's history of financial difficulties, which resulted in a Chapter 7 bankruptcy that was discharged in 1985 and the filing of a Chapter 13 bankruptcy in 1997 that has Applicant currently involved in a five-year repayment plan. There is no presumption of error below and the appealing party has the burden of raising and demonstrating error. *See, e.g.*, ISCR Case No. 99-0519 (February 23, 2001) at p. 7. Accordingly, the Board need not address the Judge's findings that have not been challenged by Applicant on appeal.

Applicant does argue that the Administrative Judge erred by finding that he took various remedial financial steps only after he filed for the Chapter 13 bankruptcy in 1997. A review of the record evidence persuades the Board that the Judge's finding reflects a reasonable, plausible interpretation of the record evidence. Applicant's argument for an alternate interpretation of the record evidence fails to demonstrate the Judge erred. *See, e.g.*, ISCR Case No. 98-0620 (June 22, 1999) at p. 3.

Applicant makes a point that the evidence shows he has \$160 left over each month after paying his expenses. Given the totality of Applicant's financial history, Applicant's point is not sufficient to demonstrate the Administrative Judge erred in her analysis and conclusions in this case.

In general, an applicant should not be held accountable for the actions and inactions of other people. However, when an applicant is legally responsible for financial obligations and debts incurred by a spouse or dependents, then those obligations and debts can be taken into account when assessing an applicant's security eligibility under Guideline F (Financial Considerations). In this case, the record shows Applicant is legally responsible for the gambling debts of his wife. Accordingly, it was not arbitrary, capricious, or contrary to law for the Judge to evaluate Applicant's history of financial difficulties in its entirety, including those problems that can be attributed to the gambling debts of Applicant's wife.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's November 28, 2000 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board