

DATE: January 5, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0077

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision dated July 28, 2000, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. The Board affirms the Administrative Judge's decision for the reasons explained below.

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

Applicant's appeal presents the following issue: Was the Administrative Judge's decision arbitrary, capricious and contrary to law?

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated March 3, 2000. The SOR was based on Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct).

Applicant declined a hearing. Department Counsel prepared a File of Relevant Material (FORM). Applicant replied to the FORM. The case was then assigned to the Administrative Judge.

The Administrative Judge issued a written decision, dated July 28, 2000, in which he 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 Administrative Judge's adverse decision.

Appeal Issue

Applicant offers new evidence on appeal and seeks to have the Board: (1) conduct a *de novo* review of that new evidence and the record evidence before the Administrative Judge; and (2) reach favorable conclusions about his security eligibility under Guideline F. For the reasons that follow, Applicant's appeal fails to demonstrate the Judge erred.

First, the Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, the Administrative Judge's factual findings cannot fairly be challenged on the basis of evidence that was not made available during the proceedings below. Applicant had the opportunity to present evidence and explanations for that evidence for consideration by the Judge during the proceedings below. Applicant is not entitled to offer additional evidence at this late stage of his case.

Second, to the extent Applicant challenges various factual findings by the Administrative Judge without relying on new evidence, his challenges fail. The Judge's challenged factual findings reflect a reasonable interpretation of the record evidence and are sustainable under Item E3.1.32.1 of the Directive's Additional Procedural Guidance. Furthermore, none of Applicant's arguments show the Judge's conclusions about Applicant's conduct and circumstances are arbitrary, capricious, or contrary to law. Directive, Additional Procedural Guidance, Item E3.1.32.3.

Third, Applicant fails to raise any challenge to the Judge's adverse findings and conclusions under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). The Judge's adverse findings and conclusions under Guideline E and Guideline J are sufficient, independent of his adverse findings and conclusions under Guideline F, to support his adverse security clearance decision. And, under the whole person concept of the Directive (E2.2.3.), the totality of Applicant's conduct and circumstances under Guidelines E, F, and J provide a rational basis for the Judge's adverse security clearance decision.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error by the Administrative Judge below. Therefore, the Administrative Judge's decision is affirmed.

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