

DATE: May 16, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0365

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Acting Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Elizabeth M. Matchinski issued a decision, dated February 8, 2001, 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 decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated September 8, 2000 to Applicant. The SOR was based on Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

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

The Administrative Judge issued a written decision, dated February 8, 2001. The Judge entered formal findings in favor of Applicant with respect to SOR paragraphs 1.c., 2.a., 2.b., 2.c., 2.d., and 3. Because those formal findings are not at issue on appeal, the Board need not address the Judge's findings and conclusions about the matters covered by those SOR paragraphs.

The Administrative Judge made findings of fact about Applicant's history of financial difficulties, and concluded the record evidence showed that Applicant had demonstrated a disregard for her legitimate financial obligations. The Judge evaluated Applicant's explanations and the record evidence of her efforts to deal with her unresolved debts and concluded that, except for the debt covered by SOR paragraph 1.c., Applicant had not presented evidence sufficient to explain, extenuate, or mitigate her history of unresolved financial difficulties. The Judge entered a formal finding in

favor of Applicant with respect to SOR paragraph 1.c., but entered formal findings against Applicant with respect to SOR paragraphs 1.a., 1.b., 1.d., 1.e., 1.f., 1.g., and 1.h.

The Administrative Judge made findings of fact about Applicant's history of disciplinary problems with one employer in 1995 and 1996, and with another employer in 1999. The Judge concluded that the record evidence concerning those disciplinary problems indicated a pattern of dishonesty or rules violations that raised questions about her suitability for a security clearance. The Judge evaluated Applicant's explanations and the record evidence about her disciplinary problems and concluded that Applicant had not presented evidence sufficient to explain, extenuate, or mitigate her history of disciplinary problems. The Judge entered formal findings against Applicant with respect to SOR paragraphs 2.e., 2.f., 2.g., 2.h., and 2.i.

The Administrative Judge concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant, based on her adverse findings and conclusions under Guideline F and Guideline E.

The case is before the Board on Applicant's appeal from the Administrative Judge's adverse security clearance decision.

Appeal Issue

On appeal, Applicant makes various statements about her case that go beyond the record evidence that was before the Administrative Judge, and offers a recent credit report on her financial situation that was generated after the Judge's decision was issued. Those statements and the recent credit report are new evidence, which the Board cannot consider on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Apart from the prohibition against consideration of new evidence on appeal, the Board reviews a Judge's findings in light of the record evidence that was before the Judge during the proceedings below. An appealing party cannot fairly contend, based on evidence that was not presented for the Judge's consideration, that a Judge's findings are in error.

Apart from offering new evidence concerning several of the debts covered by the SOR allegations, Applicant seeks to explain the reasons for some of those debts and states "I am taking responsibility of all my debts. It's taking me a while but I am paying them off in a manner that I can afford." The Board construes Applicant's statements as raising the issue of whether the Administrative Judge's adverse findings and conclusions under Guideline F are arbitrary, capricious, or contrary to law.

To the extent that Applicant's explanations about her financial difficulties can be construed as based on record evidence, those explanations fail to demonstrate the Administrative Judge's findings and conclusions under Guideline F are arbitrary, capricious, or contrary to law. A review of the record below persuades the Board that the Judge's findings of fact about Applicant's history of unresolved financial difficulties reflect a reasonable, plausible interpretation of the record evidence. Accordingly, those findings are sustainable under Directive, Additional Procedural Guidance, Item E3.1.32.1. Furthermore, the adverse conclusions the Judge reached about Applicant's history of financial difficulties are reasonable in light of the record evidence as a whole. Given the record evidence in this case, it was not arbitrary or capricious for the Judge to conclude that Applicant has demonstrated a disregard for her legitimate financial obligations. During the proceedings below, and again on appeal, Applicant has expressed a willingness to satisfy her unresolved debts. Applicant's promise to pay off her unresolved debts in the future does not constitute evidence of reform and rehabilitation that required the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 99-0447 (July 25, 2000) at p. 3 (promise to take remedial steps in future concerning delinquent debts is not evidence of reform or rehabilitation). Furthermore, nothing in Applicant's appeal brief gives the Board any reason to conclude the Judge acted in an arbitrary or capricious manner or contrary to pertinent provisions of the Directive when she analyzed Applicant's overall history of financial difficulties.

Apart from offering new evidence concerning the disciplinary problems Applicant had with one employer in 1995 and 1996, and with another employer in 1999, Applicant notes she no longer works with the employer with whom she had disciplinary problems in 1995 and 1996, and offers her explanation for the circumstances associated with those problems. Given the record evidence in this case, the Judge's findings and conclusions about Applicant's past disciplinary problems reflect a reasonable, plausible interpretation of the record evidence. Applicant's disagreement with the Judge's findings and conclusions is not sufficient to demonstrate those findings and conclusions are arbitrary,

capricious, or contrary to law. *See, e.g.*, ISCR Case No. 99-0710 (March 19, 2001) at p. 5. Furthermore, it was not arbitrary or capricious for the Judge to consider Applicant's past disciplinary problems in evaluating her security eligibility. An applicant's past conduct can be relevant in deciding whether an applicant is a suitable person to be granted a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988)(noting that security clearance decisions involve predictive judgments based on consideration of a person's past or present conduct and circumstances).

The Administrative Judge's findings and conclusions about Applicant's history of financial difficulties and her past disciplinary problems provide a rational basis for her adverse security clearance decision. The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. A history of unresolved financial difficulties can provide a rational basis for doubts about an applicant's suitability for a security clearance. *See, e.g.*, ISCR Case No. 00-0104 (March 21, 2001) at pp. 4-5 (discussing security significance of history of financial difficulties). Furthermore, the fact that Applicant's past disciplinary problems might seem to be insignificant from a security perspective, when considered by themselves, is not dispositive. Security clearance adjudications must be based on an evaluation of the whole person, not a piecemeal analysis of an applicant's past conduct and present circumstances. Conduct or circumstances that, if considered in isolation, might not warrant an adverse security clearance decision still can be evidence of poor judgment, unreliability, or untrustworthiness that supports an overall adverse security clearance decision in light of the totality of the record evidence. *See Directive, Item E2.2.4. See also* ISCR Case No. 99-0601 (January 30, 2001) at p. 8 ("Under the whole person concept, an Administrative Judge must assess the totality of an applicant's conduct and circumstances in order to evaluate the applicant's security eligibility, not just consider an applicant's conduct and circumstances in a piecemeal manner."); ISCR Case No. 99-0295 (October 20, 2000) at p. 5 (citing earlier Board decisions).

Conclusion

Applicant has failed to meet her burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's February 8, 2001 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