

DATE: June 22, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0370

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Administrative Judge John G. Metz, Jr. issued a decision dated March 9, 2001 in which he 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.

The 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 decision below was arbitrary, capricious or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals (DOHA) issued an undated Statement of Reasons (SOR) to Applicant. The SOR was based on Adjudicative Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant requested a hearing in a letter dated November 6, 2000. After the hearing the Administrative Judge issued an adverse decision. The case is before the Board on Applicant's appeal from that decision. [\(1\)](#)

**Appeal Issue**

On appeal, Applicant discusses the negative effects the Administrative Judge's decision will have on his career, acknowledges that he "made a big mistake," asserts that his "actions resulting in this case were not deliberate" and states that he has no intention of defrauding the government. Taken as a whole the Board construes Applicant's brief as raising a claim that the Administrative Judge's decision below was arbitrary, capricious, or contrary to law.

Applicant makes assertions on appeal regarding changes in his financial situation since the hearing. Those assertions constitute new evidence which the Board is not permitted to consider (Directive, Additional Procedural Guidance, Item E3.1.29.).

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. Because Applicant does not challenge any of the Administrative Judge's findings and conclusions about his history of financial difficulties, the Board need not address those findings and conclusions.

The Board construes Applicant's assertions that his actions were not deliberate and that he had no intention of defrauding the government as a challenge to the Administrative Judge's finding that Applicant falsified a security clearance application. The Judge explained why he did not accept Applicant's explanation for omitting from the security clearance application information about his delinquent debts. The Judge's finding of falsification reflects a plausible, reasonable interpretation of the record evidence and is not arbitrary, capricious, or contrary to law.

The Administrative Judge's findings and conclusions about Applicant's falsification of the security clearance application and Applicant's history of financial difficulties provide a rational basis for the Judge's adverse security clearance decision. The negative effects that an adverse security clearance decision might have on Applicant's career do not render the Judge's decision arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 00-0593 (May 14, 2001) at p. 4.

Applicant asks whether he can reapply for a security clearance sooner than one year after the date of the Administrative Judge's decision. The Board has no authority to address reapplication questions (see Directive, Additional Procedural Guidance, Items E3.1.37 through E3.1.41).

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. 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

1. The Administrative Judge made Formal Findings for Applicant under SOR paragraphs 1.e, 1.f, and 1.i. Those favorable Formal Findings are not at issue on appeal.