

DATE: August 15, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0378

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Robert R. Gales issued a decision, dated April 25, 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.

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 following issues: (1) whether the Administrative Judge's findings of fact are supported by substantial record evidence; and (2) 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 September 25, 2000 to Applicant. The SOR was based on Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). A hearing was held on March 27, 2001. The Administrative Judge issued a written decision, dated April 25, 2001, 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 Judge's adverse decision.

Administrative Judge's Findings and Conclusions

Applicant has been financially overextended since approximately 1993 and has a history of not meeting her financial obligations. Applicant's financial difficulties were exacerbated by several factors: (1) her salary was reduced in 1993; (2) she had back surgery in 1994, with subsequent medical bills; (3) she had an absence of work due to surgery; (4) she was a single mother with two children in school; and (5) she overextended herself financially. A substantial number of Applicant's creditors have referred her overdue accounts for collection or charged them off as bad debts.

Applicant has satisfied the debts covered by SOR paragraphs 1.a. and 1.h. However, Applicant is currently delinquent on several accounts (covered by SOR paragraphs 1.b. through 1.g.). Applicant has failed to satisfy her outstanding debts

despite asserting on three separate occasions (in January 2000, July 2000, and November 2000) that she would contact her creditors and work out payment arrangements to satisfy her debts.

Applicant has failed to demonstrate extenuation or mitigation that overcomes the security concerns raised by her history of financial difficulties. Applicant's history of financial difficulties warrants an adverse formal finding with respect to Guideline F.

Applicant did not intend to deceive or mislead the government about her financial situation when she omitted certain information from a security questionnaire she completed in August 1999. Applicant's omission was unintentional or the result of careless oversight. Accordingly, formal findings in favor of Applicant are warranted with respect to Guideline E and Guideline J.

Based on Applicant's history of financial difficulties, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Appeal Issues

The Administrative Judge's favorable findings and conclusions concerning Guideline E and Guideline J are not at issue on appeal. Accordingly, the Board need not address those findings and conclusions in order to decide this appeal.

On appeal, Applicant makes several arguments. Two of Applicant's arguments raise the issue of whether the Administrative Judge's findings of fact are supported by substantial record evidence. Applicant's other arguments raise the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. The Board will address Applicant's arguments in turn.

1. Whether the Administrative Judge's findings of fact are supported by substantial record evidence. Applicant argues: (a) the SOR was incorrect because some medical bills were listed as credit card accounts, and some of the credit card bills had been paid in full; and (b) she believes there are some mistakes on her credit report. For the reasons that follow, the Board concludes Applicant has failed to demonstrate the Administrative Judge's findings of fact about her history of financial difficulties are erroneous.

(a) Applicant is correct that SOR paragraph 1.f. incorrectly characterized the debt as "a delinquent credit card debt." However, at the hearing, Department Counsel moved to amend SOR paragraph 1.f. to conform to the evidence that showed the debt was actually a medical bill. Furthermore, the Administrative Judge correctly characterized that debt in his findings of fact as a medical debt, not a credit card debt. Therefore, Applicant suffered no prejudicial harm by the mistake in the SOR concerning this debt.

Applicant presented evidence that she had paid the debts covered by SOR paragraphs 1.a. and 1.h. The Administrative Judge found Applicant's evidence to be persuasive and concluded she had satisfied those two debts. Therefore, Applicant suffered no prejudicial harm by the inclusion of those two debts in the SOR.

Applicant does not challenge the Administrative Judge's findings of fact concerning the rest of the debts covered by the SOR. Accordingly, the Board need not address those findings of fact.

(b) Attached to Applicant's appeal brief are copies of two documents that discuss the subject of mistakes in credit reports. Those two documents constitute new evidence, which the Board cannot consider on appeal. Directive, Additional Procedural Guidance, Item E3.1.29.

At the hearing, Applicant had the opportunity to present evidence concerning the debts alleged in the SOR for consideration by the Administrative Judge. Apart from the debts covered by SOR paragraphs 1.a. and 1.h., Applicant essentially conceded that she owed the debts covered by SOR paragraphs 1.b. through 1.g. The Judge's findings about the debts covered by SOR paragraphs 1.b. through 1.g. are supported by the record evidence as a whole (including Applicant's admissions). Applicant's unsubstantiated claim that there might be mistakes on her credit report falls far short of demonstrating any error by the Judge with respect to his findings of fact about Applicant's delinquent debts.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant argues: (a) some of the debts listed on the SOR are old ones that happened in the 1990s when she was having a very difficult time with her finances and her health; (b) she has been making an effort to correct her past financial problems, but is having trouble doing so because it is hard to get documentation about some of her older debts; (c) she needs her job to correct her financial problems; (d) the total amount of her outstanding debts is not enough to make her betray the United States; and (e) she is not a criminal and not a threat to the United States. These arguments raise the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

The Administrative Judge considered the facts and circumstances of Applicant's overall history of financial difficulties and concluded she had failed to demonstrate extenuation and mitigation sufficient to warrant a favorable security clearance decision. The Judge's analysis was consistent with pertinent provisions of the Directive. A Judge must consider the record evidence, both favorable and unfavorable, and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. See, e.g., ISCR Case No. 00-0417 (May 1, 2001) at p. 3. Applicant's appeal arguments fail to demonstrate the Judge weighed the record evidence in an arbitrary or capricious manner.

The age of some of Applicant's debts did not extenuate or mitigate the negative security implications arising from the fact that she still had not resolved those debts as of the date of the hearing. The Administrative Judge considered the evidence of Applicant's efforts to resolve her delinquent debts and concluded she had failed to demonstrate financial reform or rehabilitation sufficient to warrant a favorable security clearance decision. Considering the record evidence as a whole, the Judge's conclusion is not arbitrary, capricious, or contrary to law.

Applicant's other arguments raise the question of whether the Administrative Judge had a rational basis for his unfavorable security clearance decision. Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). The federal government need not wait until an applicant mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information.

Under Guideline F, the security eligibility of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties. See ISCR Case No. 96-0454 (February 7, 1997) at p. 2. "Furthermore, '[f]inancial difficulties, financial irresponsibility and greed have proven to be significant motivating forces for espionage or attempted espionage. It is clear that the United States must consider whether individuals granted access to classified information are, through financial irresponsibility, greed or financial misfortune, in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.'" ISCR Case No. 95-0611 (May 2, 1996) at pp. 2-3 (quoting earlier Board decision). *Accord* ISCR Case No. 00-0104 (March 21, 2001) at pp. 4-5. Department Counsel does not have to prove that an applicant poses a "clear and present danger" to national security, *Smith v. Schlesinger*, 513 F.2d 462, 476 n.48 (D.C. Cir. 1975), or that an applicant poses an imminent threat of engaging in criminal acts. In this case, the facts and circumstances of Applicant's history of financial difficulties provide a rational basis for the Administrative Judge's adverse security clearance decision. Applicant's appeal arguments fail to demonstrate the Judge erred.

Conclusion

Applicant has failed to meet her burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's unfavorable security clearance 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