

DATE: July 9, 2001

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0429

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Administrative Judge Claude Heiny issued a decision, dated March 21, 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 issue of whether the Board should remand the case so that Applicant can have a new hearing where he can have legal representation and be allowed to present new evidence on his behalf.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated September 21, 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 November 21, 2000. The Administrative Judge did not receive a hearing transcript. On March 15, 2001, the Judge sent to both parties proposed findings of fact. Those proposed findings of fact were accepted by both parties. The Judge issued a written decision, dated March 21, 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 now before the Board on Applicant's appeal from the Administrative Judge's adverse security clearance decision.

**Appeal Issue**

The Administrative Judge entered formal findings in favor of Applicant with respect to the matters covered by SOR paragraphs 1.a., 1.b., 1.d., 1.i., and 3.a., and entered a formal finding in favor of Applicant with respect to Guideline J (Criminal Conduct). Those favorable formal findings are not at issue on appeal.

On appeal, Applicant has not challenged any of the Administrative Judge's findings or conclusions. Applicant merely states "I would like the opportunity to be heard again, with addition of legal representation, character witnesses, and new

evidence, on my behalf. My appeal is based on all charges/matters that were ruled against me.

There is no presumption of error below, and the appealing party has the burden of raising and demonstrating factual or legal error by the Administrative Judge. *See, e.g.*, ISCR Case No. 00-0339 (March 22, 2001) at p. 3; ISCR Case No. 00-0248 (March 21, 2001) at p. 2. Furthermore, the appealing party must set forth its claims of error with specificity. *See, e.g.*, ISCR Case No. 99-0519 (February 23, 2001) at p. 9. The requirement that the appealing party raise issues with specificity serves some important purposes. First, the appealing party must provide specificity in its claims of error so that the nonappealing party can have a reasonable opportunity to respond to those claims of error, and the Board can discern what the appealing party is claiming to be factual or legal error by the Judge. *See, e.g.*, ISCR Case No. 99-0295 (October 20, 2000) at pp. 3-4. Second, the Board does not review cases *de novo*. Rather, the Board is limited to reviewing a Judge's decision under the terms of the Directive, Additional Procedural Guidance, Item E3.1.32. ("The Appeal Board shall address the material issues *raised by the parties* to determine whether harmful error occurred.") (emphasis added) *See also* ISCR Case No. 99-0519 (February 23, 2001) at p. 9. Accordingly, if an appealing party fails to make any specific claim of factual or legal error, the Board cannot assume the role of surrogate advocate and search the record below and the Judge's decision to ferret out possible error. Third, the Board cannot engage in reasoned decision-making when carrying out its appellate responsibilities unless the appealing party provides some specificity to its claims of factual or legal error. The Board cannot be expected to guess what an appealing party believes is factual or legal error by the Judge. Fourth, unless the appealing party raises claims of error with some specificity, the Board could waste its time (and prejudice the nonappealing party) by addressing matters that the appealing party does not believe involve error by the Judge.

In this case, Applicant has not made any specific claim of factual or legal error by the Administrative Judge. Appellant's blanket assertion that he is appealing "all charges/matters that were ruled against me" lacks the specificity needed to enable the Board to carry out its appellate review responsibilities under the Directive. Appellant's *pro se* status does not relieve him of the obligation to raise specific claims of error. *Cf.* ISCR Case No. 00-0593 (May 14, 2001) at p. 4 ("Applicant's *pro se* status did not relieve him of the obligation to take timely, reasonable steps to protect his rights under Executive Order 10865 and the Directive."). Even though a *pro se* applicant's appeal brief cannot be expected to meet the standards expected of a lawyer's brief, *see* DISCR Case No. 90-0635 (March 26, 1992) at p. 2, a *pro se* applicant's appeal brief must set forth specific claims of error.

Absent a showing of factual or legal error that affects a party's right to present evidence in the proceedings below, a party does not have the right to have a second chance at presenting its case before an Administrative Judge. *See, e.g.*, ISCR Case No. 00-0593 (May 14, 2001) at p. 4. Applicant has failed to identify or demonstrate any error by the Judge, let alone any error that affected his rights to have legal representation or to present evidence on his behalf during the proceedings below. Accordingly, there is no factual or legal basis for the Board to grant the Applicant the relief he seeks.

### **Conclusion**

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's March 21, 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