

DATE: November 9, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0581

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Kathryn Moen Braeman issued a decision, dated June 25, 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 decision is arbitrary, capricious or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated November 17, 2000. The SOR was based on Guideline F (Financial Considerations). Applicant elected to have his case decided on the written record rather than a hearing. Department Counsel prepared a File of Relevant Material (FORM) dated February 7, 2001. The FORM was sent to Applicant for his review and comment. Applicant did not respond to the FORM. The case was assigned to the Administrative Judge on May 7, 2001.

The Administrative Judge issued a written decision, dated June 25, 2001, in which she 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 security clearance decision.

Scope of Review

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. *See* Directive, Additional Procedural Guidance, Item E3.1.32. *See, e.g.*, ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (discussing reasons why party must raise claims of error with specificity).

When an Administrative Judge's factual findings are challenged, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge." Directive, Additional Procedural Guidance, Item E3.1.32.1. The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings. *See, e.g.*, ISCR Case No. 99-0205 (October 19, 2000) at p. 2.

When a challenge to an Administrative Judge's rulings or conclusions raises a question of law, the Board's scope of review is plenary. See DISCR Case No. 87-2107 (September 29, 1992) at pp. 4-5 (citing federal cases).

Issue

Whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law.

Applicant submitted no written appeal brief containing substantive arguments or specific claims of error. His appeal brief consists solely of a submission of a two-sentence cover letter and two documents. The first document is a collection of pages from a bankruptcy case, including a document indicating that Applicant obtained a discharge in bankruptcy. The second document is a letter from an officer of Applicant's employer stating that Applicant is a trustworthy employee and that Applicant was involved in a serious automobile accident and incurred medical expenses that were not covered by insurance. The submission of these documents without further comment by Applicant is construed by the Board as an assertion that the Administrative Judge's decision was arbitrary, capricious, and contrary to law.

The two documents that makeup Applicant's appeal submission constitute new evidence, which the Board cannot consider on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. At the time he received the FORM, Applicant was advised of his right to submit evidence in written form in support of his case. He failed to do so. The Administrative Judge was obliged to base her decision on the record before her. Having failed to present evidence in response to the FORM, Applicant cannot seek to challenge the Administrative Judge's decision based on evidence that was not made available for the Judge's consideration.

There is no presumption of error below. Applicant has failed to demonstrate any factual or legal error by the Administrative Judge.

Conclusion

Applicant has failed to meet his 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 Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board