

DATE: April 10, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0141

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Elizabeth M. Matchinski issued a decision, dated November 9, 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 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). On December 9, 2000, Applicant answered the SOR and requested a decision on the written record in lieu of a hearing.

On February 21, 2001, the government issued a File of Relevant Material (FORM) which included the documentary evidence against Applicant. Applicant was given a copy of the FORM and provided with an opportunity to submit documentary information in rebuttal to the FORM or to provide the Administrative Judge with other information for consideration in her case. Applicant submitted a response to the FORM dated September 28, 2001. The Administrative Judge issued a written decision, dated November 9, 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 decision.

Applicant filed an appeal brief. Department Counsel did not submit a reply brief.

#### **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).

### **Appeal Issue**

Whether the Administrative Judge's decision was arbitrary, capricious or contrary to law. On appeal, Applicant alleges no specific error on the part of the Administrative Judge. Rather, she describes in some detail the status of her financial situation in the past and how it has evolved subsequent to the close of the record in the case. Additionally, Applicant states that she could never be induced or intimidated into selling or giving away the nation's secrets. The Board construes Applicant's arguments as an assertion that the Administrative Judge's decision is arbitrary, capricious or contrary to law.

Applicant's appeal brief is comprised largely of assertions that go beyond the written record. Applicant also attached numerous documents to the brief that contain representations that are also outside the record. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Applicant took advantage of her opportunity to respond to the government's FORM. However, her submission contained only a short written statement and no corroborating documentation. By not submitting the documents in a timely manner, Applicant forfeited her right to have them considered by the Administrative Judge. In regard to some of Applicant's debts, she does repeat claims made below, however she fails to demonstrate the Administrative Judge erred in her findings and conclusions with regard to those debts.

Applicant argues that despite her history of financial difficulties, she would never compromise the nation's secrets. The government need not wait until an applicant mishandles or fails to properly safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). In this case, Applicant's history of recurring financial difficulties provides a rational basis for the Judge's adverse conclusions about her security eligibility. *See, e.g.*, ISCR Case No. 96-0454 (February 7, 1997) at pp. 2-3 (discussing security significance of history of excessive indebtedness or recurring financial difficulties).

### **Conclusion**

Applicant has failed to meet her burden on appeal of demonstrating error in the Administrative Judge's decision below. Accordingly, 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