

DATE: October 4, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0596

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Barry M. Sax issued a decision, dated June 13, 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 erred by finding Applicant is responsible for certain debts; 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 October 20, 2000 to Applicant. The SOR was based on Guideline F (Financial Considerations). A hearing was held on April 16, 2001. The Administrative Judge issued a written decision, dated June 13, 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 Administrative 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).

Appeal Issues

1. Whether the Administrative Judge erred by finding Applicant is responsible for certain debts. The Administrative Judge found that Applicant is indebted to: (a) a commercial creditor for approximately \$5,100, for a civil judgment entered against him in September 1994 relating to a repossessed automobile; and (b) the Internal Revenue Service (IRS) for approximately \$41,000, for tax years 1979 and 1980. During the proceedings below and on appeal, Applicant has disputed the validity of those debts.

DOHA proceedings are not a proper forum for Applicant to challenge the validity of the civil judgment entered against him in September 1994 or the validity of the federal taxes (and interest and penalties) assessed against him by the IRS. If Applicant wishes to contest the validity of those debts, he must seek legal recourse elsewhere.⁽¹⁾ Considering the record as a whole, the Administrative Judge had ample evidence to find that Applicant was responsible for the debts to the commercial creditor and the IRS.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant: (a) challenges the Administrative Judge's application of Financial Consideration Disqualifying Conditions 1 and 3; (b) asserts the Judge erred by concluding he is not resolving his debts in a timely manner; and (c) argues the Judge erred by concluding he is a security risk. The Board construes these contentions as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

(a) The Administrative Judge applied Financial Considerations Disqualifying Condition 1⁽²⁾ and Financial Considerations Disqualifying Condition 3⁽³⁾ to Applicant's case. Applicant challenges the Judge's application of those two disqualifying conditions. In support of that challenge, Applicant argues: (i) apart from the civil judgment against him and the federal tax debt, he has paid his other debts and financial obligations; (ii) he has paid his federal taxes for 41 years, as opposed to the two tax years for which the IRS says he owes taxes; (iii) despite his belief that he does not owe the debts covered by the SOR, he is continuing to try to get them resolved; and (iv) he is willing to pay his just debts, and merely wants to prove that debts are justifiable before he pays them.

Applicant's arguments fail to demonstrate the Administrative Judge erred by applying Financial Considerations Disqualifying Conditions 1 and 3. Even though Applicant has paid other debts and financial obligations, his failure to satisfy or otherwise resolve the two significant debts against him provides a sufficient basis for the Judge to apply Disqualifying Condition 1. Furthermore, Applicant's failure to satisfy or otherwise resolve those two significant debts for the past several years provides an ample basis for the Judge to apply Disqualifying Condition 3.

(b) Applicant has been aware since about 1990 that the IRS has assessed him for unpaid taxes for two tax years. The civil judgment was entered against Applicant in September 1994. As of the hearing in April 2001, Applicant still had not resolved those debts. Accordingly, the Administrative Judge had an ample basis for concluding Applicant has not acted in a timely manner to deal with those debts.

(c) Applicant points to his past military service, his years of employment in the defense industry, and his years of having a security clearance, and contends the Administrative Judge is wrong by concluding he is a security risk. Applicant's argument fails to demonstrate the Judge erred.

The favorable evidence cited by Applicant weighs in his favor, but it did not preclude the Administrative Judge from making an adverse security clearance decision. A Judge must consider the record evidence, both favorable and unfavorable, and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. Considering

the record as a whole, the Board concludes Applicant has failed to demonstrate the Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law.

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). Furthermore, 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). 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. The facts and circumstances of Applicant's history of unresolved debts provide a rational basis for the Administrative Judge's adverse security clearance decision.

Conclusion

Applicant has failed to demonstrate error below. Accordingly, the Board affirms the Administrative Judge's June 13, 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

1. *See, e.g.*, ISCR Case No. 99-0433 (May 24, 2000) at p. 2 ("Applicant's right to a hearing does not mean that he can litigate in DOHA proceedings the validity of tax matters that are committed by law to the jurisdiction of the IRS and the federal courts."); ISCR Case No. 99-0116 (May 1, 2000) at p. 2 ("Due process of law does not give an applicant the right to relitigate matters that have been adjudicated in a prior due process proceeding.").

2. "A history of not meeting financial obligations."

3. "Inability or unwillingness to satisfy debts."