

DATE: May 28, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0587

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Barry M. Sax issued a decision, dated January 15, 2002, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

The 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) Did the Administrative Judge consider all the record evidence? and 2) Were the Administrative Judge's findings and conclusions arbitrary

and capricious in light of the record evidence as a whole?

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated April 17, 2001. The SOR was based on Guideline F (Financial Considerations).

Applicant declined a hearing. The Administrative Judge issued an opinion based on the administrative record consisting of a File of Relevant Material (FORM) and Applicant's response dated October 12, 2001. The Administrative Judge's decision, dated January 15, 2002, was unfavorable. The case is before the Board on Applicant's appeal of that 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) Did the Administrative Judge consider all the record evidence? Applicant's appeal contains documents and assertions that constitute new evidence. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, Applicant cannot fairly challenge the Judge's findings and conclusions based on information that was not presented for the Judge's consideration. Applicant questions whether the Administrative Judge considered all the record evidence, especially the evidence supplied by Applicant in his October, 12, 2001 response to the FORM. The Board notes that the Administrative Judge explicitly referred to material from the response to the FORM on seven occasions in his opinion. On each such occasion the Administrative Judge used the term "Response to Form" or "RTF." It is well settled that an Administrative Judge does not have to mention or discuss specifically every piece of evidence in his decision. *See, e.g.*, ISCR Case No. 00-0621 (January 30, 2002), at p. 3. The mere fact that an Administrative Judge concludes that favorable evidence presented by an applicant is not sufficient to outweigh or overcome the unfavorable evidence does not demonstrate that the Judge disregarded or ignored the favorable evidence or improperly weighed the evidence. *See, e.g.*, ISCR Case No.00-0489 (January 10, 2002) at p. 10. Furthermore it is well settled that an appealing party's ability to interpret the record evidence in their favor does not demonstrate error on the Judge's part. *See, e.g.*, ISCR Case No. 00-0445 (February 21, 2002) at pp. 2-3. Finally, there is a rebuttable presumption that the Administrative Judge considered all the record evidence unless the Judge specifically states otherwise. Applicant's arguments are insufficient to overcome that presumption. The Board concludes that the Applicant has failed to demonstrate that the Administrative Judge did not consider all the record evidence.

2) Were the Administrative Judge's findings and conclusions arbitrary and capricious in light of the record evidence as a whole? Applicant noted that his divorce settlement was part of the record. In that settlement, Applicant's ex-spouse agreed to take responsibility for certain debts that were their joint responsibility (Applicant's spouse was to include those debts in a bankruptcy and to hold Applicant "harmless"). Applicant argues that the Administrative Judge was obliged to accept the terms of the settlement and thus not hold those unpaid debts against Applicant for security clearance purposes. The Board does not agree. The fact that Applicant's spouse promised to reimburse Applicant for any cost if the creditors demanded payment from Applicant did not eliminate Applicant's separate legal responsibility to the creditors with whom he had a direct financial relationship. It was reasonable for the Administrative Judge to evaluate Applicant's financial situation in light of his legal obligations to the creditors.

Applicant also challenges certain specific findings by the Administrative Judge. However, his challenges are based on new evidence which the Board cannot consider. In one case Applicant acknowledges that the alleged error is merely "technical," which the Board understands here to be harmless. Furthermore, Applicant acknowledges on appeal that, even given the new evidence (which the Board cannot consider), the Administrative Judge could find against Applicant on four of the ten allegations under Guideline F.

Applicant also contends the Administrative Judge's statement that his response to the FORM was not received until October 12, 2001 is "biased or misleading." Applicant's specific arguments on this point demonstrate no error concerning the Judge's findings and conclusions under Guideline F.

Applicant has failed to demonstrate that the Administrative Judge's findings and conclusions were arbitrary and capricious in light of the record evidence as a whole.

Conclusions

Applicant has failed on appeal to meet his burden of demonstrating error below. Therefore 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

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Administrative Judge

Member, Appeal Board