

DATE: August 28, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0622

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Claude R. Heiny issued a decision, dated May 4, 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's findings about Applicant's financial difficulties are not supported by substantial record evidence; 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 January 10, 2001 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 March 27, 2001. At the hearing, Department Counsel moved to amend the SOR to drop the allegations under Guideline E and Guideline J. The Administrative Judge granted Department Counsel's motion. As a result, Applicant's case was limited to the matters alleged in the SOR under Guideline F.

The Administrative Judge issued a written decision, dated May 4, 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.

### **Administrative Judge's Findings and Conclusions**

Applicant has a history of financial difficulties that started in 1990. Applicant has five past due debts. The debt covered by SOR paragraph 1.a. was initially for \$198. Applicant has made payments on that debt that have reduced it. Applicant

still owes money on the debts covered by SOR paragraph 1.b. (\$939), SOR paragraph 1.c. (\$7101.46), SOR paragraph 1.d. (\$243), and SOR paragraph 1.e. (\$3941).

Applicant's financial problems have been affected by four automobile accidents involving uninsured drivers that occurred in Fall 1995, Spring 1996, Spring 2000 and November 2000. As a result, Applicant incurred \$760 in rental expenses. Furthermore, Applicant's wife lost \$900 in pay when she took time off from work in October 2000 to visit her mother, who had a heart attack and bypass surgery. Although the rental expenses and the loss of pay by Applicant's wife were beyond Applicant's control, they are not the primary cause of Applicant's financial problems.

In September 1990, Applicant gave a written statement in which he indicated that he would make arrangements by November 1990 to pay the balance of the debt covered by SOR paragraph 1.e., but he did not do so. In May 2000, Applicant told a Defense Security Service special agent that he would take action on his outstanding accounts. Starting Christmas 2000, Applicant began an effort to reduce his monthly expenses. The night before the hearing, Applicant and his wife attended the first night of a thirteen-week financial counseling seminar.

Applicant has received a single session of financial counseling, but there is no clear indication that his financial problems are being resolved or are under control. Applicant has contacted his creditors, but there is no indication that they have agreed to repayment plans. Applicant has failed to show a systematic, concrete method of handling his past due debts.

Because Applicant has failed to demonstrate sufficient mitigation, formal findings are entered against Applicant with respect to the debts covered by SOR paragraphs 1.b. through 1.e. A formal finding is entered for Applicant with respect to the debt covered by SOR paragraph 1.a.

It is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

### **Appeal Issues**

1. Whether the Administrative Judge's findings about Applicant's financial difficulties are not supported by substantial record evidence. On appeal, Applicant argues: (a) he owes approximately \$7803 on two debts; (b) he is working with creditors to resolve his outstanding debts and to get his credit report updated; and (c) he has resolved three of the debts that the Administrative Judge found he still owed. The Board construes these arguments as challenging the Administrative Judge's findings about his history of financial difficulties.

Before the hearing, Applicant admitted that he owed all of the debts alleged in the SOR. At the hearing, Applicant essentially admitted that he owed four of the debts alleged in the SOR, but claimed that he was not sure about the debt covered by SOR paragraph 1.e. Considering the record as a whole, the Administrative Judge's findings about Applicant's debts reflect a reasonable interpretation of the evidence before the Judge. Applicant's argument to the contrary is based on new evidence, which the Board cannot consider. *See* Directive, Additional Procedural Guidance, Item E3.1.29. [\(1\)](#)

Furthermore, Applicant's argument to the contrary is not plausible given the record evidence in this case.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant makes several arguments that the Board construes as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Specifically, Applicant argues: (a) a Congressional hearing in February 2000 showed that the Defense Security Service (DSS) has a massive backlog of cases to investigate and has deviated from investigative standards; (b) it is possible that his case was one of the cases where the DSS deviated from its investigative standards; (c) he has a good job performance history; (d) he has not abused his family, he is not a drunk, he abhors drugs, and he has never had to appear in criminal court; (e) Department Counsel's motion to amend the SOR at the hearing to drop the SOR allegations under Guideline E and Guideline J shows he is an honest individual; (f) his employer has not received calls from his creditors about his debts; (g) he has not filed for bankruptcy; and (h) he has been involved in good-faith efforts to improve his financial situation.

Applicant's reference to the Congressional hearing about DSS fails to demonstrate the Administrative Judge committed

any factual or legal error in his handling of the case at hearing or in his written decision. Furthermore, Applicant's speculation about whether the DSS properly handled his case fails to raise any plausible claim of factual or legal error by the Judge in his handling of the case or in his written decision.

Applicant's job performance does not demonstrate the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. An applicant with good job performance may engage in off-duty conduct that has negative security implications. *See, e.g.*, ISCR Case No. 99-0462 (May 25, 2000) at p. 5. Evidence of an applicant's good job performance does not preclude a Judge from considering the security significance of an applicant's off-duty conduct and circumstances. In this case, Applicant's history of financial difficulties has negative security significance that is not negated or reduced by Applicant's job performance.

Applicant is correct in noting that there is no evidence that he has engaged in a variety of other, more serious conduct. However, "[e]ven if an applicant has not engaged in other conduct that has more serious negative security significance, the Judge still has the obligation to evaluate the security significance of the conduct the applicant did engage in." ISCR Case No. 99-0254 (February 16, 2000) at p. 3. The negative security significance of Applicant's history of financial difficulties is not negated or diminished because he has not engaged in other, more serious conduct. Applicant also points out that his financial difficulties have not resulted in certain adverse consequences (such as creditors calling his employer or his filing for bankruptcy). However, the absence of such adverse consequences did not preclude the Administrative Judge from considering the negative security significance of Applicant's history of financial difficulties. A Judge is not required to make a favorable security clearance decision merely because an applicant's conduct or circumstances are not worse than they are.

Department Counsel's motion to amend the SOR by dropping the allegations under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) does not render the Administrative Judge's adverse decision arbitrary, capricious, or contrary to law. The negative security significance of Applicant's history of financial difficulties is not negated or diminished because Department Counsel did not try to prove Applicant falsified his security questionnaire (as originally alleged in the SOR).

Applicant's recent efforts to deal with his financial difficulties did not compel the Administrative Judge to make a favorable security clearance decision. The Judge analyzed Applicant's efforts to deal with his financial difficulties in light of Applicant's overall history of financial difficulties and Applicant's failure to follow through on earlier statements that he would deal with his debts. The Judge's analysis was consistent with the requirement that he consider the record evidence as a whole (Directive, Section 6.3) and evaluate the overall facts and circumstances of Applicant's case (Directive, Item E2.2.1). Considering the record as a whole, it was not arbitrary, capricious, or contrary to law for the Judge to conclude that Applicant's recent efforts at dealing with his financial difficulties are not sufficient to mitigate the negative security significance of Applicant's overall history of financial difficulties.

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. "Furthermore, [f]inancial difficulties, financial irresponsibility and greed have proven to be significant motivating forces for espionage or attempted espionage. It is clear that the United States must consider whether individuals granted access to classified information are, through financial irresponsibility, greed or financial misfortune, in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain." ISCR Case No. 95-0611 (May 2, 1996) at pp. 2-3 (quoting earlier Board decision). *Accord* ISCR Case No. 00-0104 (March 21, 2001) at pp. 4-5. 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), or that an applicant poses an imminent threat of engaging in criminal acts. The facts and circumstances of Applicant's history of financial difficulties 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 adverse security clearance 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. Applicant states that he did not have information available earlier to dispute the validity of some entries on his credit report. Applicant was placed on notice (through the Financial Interrogatories he answered in October 2000) that the government contended that his credit report showed he was delinquent on five debts (which were later alleged in the SOR). Applicant received the SOR (which placed him again on notice of which debts the government alleged he was delinquent on), was given the opportunity to respond to the SOR, and had the opportunity to prepare for the hearing that he requested. Furthermore, at the hearing, Applicant did not indicate he was unprepared to proceed, and he did not ask for additional time to obtain documentation to present on his behalf. Considering all the circumstances, the Board concludes Applicant was not denied the opportunity to respond to the allegations against him or to obtain and present evidence on his behalf.