

DATE: April 23, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0212

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge John G. Metz, Jr., issued a decision, dated November 28, 2000, in which he concluded it is not clearly consistent with the interests of national security 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.

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 issue of whether the Administrative Judge's decision was arbitrary, capricious or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) dated May 30, 2000. The SOR was based on Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). A hearing was held on October 3, 2000. The Administrative Judge issued a written decision dated November 28, 2000 in which he concluded that 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 appeal from that adverse decision.

Appeal Issue⁽¹⁾

Applicant's appeal challenges several of the Administrative Judge's factual findings and application of the Directive. Taken together Applicant's arguments constitute an assertion that the decision below was arbitrary capricious and contrary to law.

Applicant asserts that the Administrative Judge ignored Applicant's two divorces and unemployment in analyzing Applicant's financial difficulties. Applicant's assertion fails on review of the record. The Administrative Judge explicitly referred to the two divorces. The Board sees no evidence in the record reflecting unemployment (in fact Applicant submitted a Social Security earning statement which reflects steady income by Applicant).

Applicant refers to his correspondence with a creditor in order to deal with a \$1,700 bank debt. The Administrative Judge cited one such letter but noted that the record did not reflect what reply if any had been elicited. Furthermore, the fact that Applicant contacted the creditor in an effort to liquidate the debt did not preclude the Judge from considering this debt as part of Applicant's overall history of financial difficulties. Applicant has not demonstrated error.

Applicant argues that the Administrative Judge erred in finding against him on an \$800 debt because a) he made a \$25 payment on the debt and b) because the creditor later extended him new credit. Applicant has failed to demonstrate error. Applicant's token payment did not mandate that the Judge find for Applicant on that debt, particularly since the vast majority of the debt was still unsatisfied. The business practices of the creditor do not have any impact on the Administrative Judge's findings and conclusions about Applicant's overall history of financial difficulties.

Applicant points out that the Administrative Judge used some language in his adverse decision which would be consistent with a decision to grant or continue a clearance for Applicant. Applicant's point is not frivolous. The Administrative Judge did write "the overwhelming tenor of his credit bureau reports is of a debtor who takes his financial obligations seriously." Such language stands in stark contrast with the Administrative Judge's conclusion in the previous paragraph, "The record evidence clearly establishes Applicant's indebtedness and his irresponsible handling of that indebtedness." However, the Board does not review isolated sentences in a Judge's decision. *See, e.g.*, ISCR Case No. 00-0104 (March 21, 2001) at p. 3. Given the record and the Judge's decision as a whole the Board concludes that language cited by Applicant does not detract sufficiently from the ultimate decision in the case to find error worthy of remand or reversal.

Applicant contends that the Administrative Judge erred by finding he still owed a cable television debt worth \$51.00. Applicant correctly notes that Applicant Exhibit C (a recent credit report) does not list that debt. However, there is record evidence indicating Applicant owed the debt, and the Judge correctly noted in his decision that there is no record evidence that Applicant made any effort to address this debt. It was not arbitrary or capricious for the Judge to weigh the record evidence and conclude Applicant failed to satisfy his burden of proof concerning this debt.

Applicant cites previous DOHA cases he believes are inconsistent with the Administrative Judge's decision in his case. One such citation is to an Appeal Board decision which *reversed* a favorable Hearing Office decision (although the Board did affirm a finding for that applicant on his periodic payments of spousal support). Another citation is to a Hearing Office case which was adjudicated in an applicant's favor. Decisions by Hearing Office Judges are not binding on the Board, and they are not binding on their Hearing Office colleagues. *See, e.g.*, ISCR Case No. 98-0761 (December 27, 1999) at p. 4. Neither case cited by Applicant presents a basis to conclude that Applicant's case has adjudicated unfairly or in an arbitrary or capricious manner. Evidence that an applicant is trying to address and resolve unsatisfied debts weighs in the applicant's favor. However, a Judge has to consider the record evidence as a whole (Directive, Section 6.3. and Item E2.2.1.) and consider whether the applicant's efforts are reasonably calculated to resolve the unsatisfied debts in the foreseeable future. In this case, the Judge gave a sufficient explanation for his conclusion that Applicant's unresolved debts left doubts about Applicant's suitability for a security clearance.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating reversible error. The Administrative Judge's decision below 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

1. The Administrative Judge made formal findings in favor of Applicant with respect to the matters covered by SOR paragraphs 1.b., 1.c., 1.e., 1.f., 2, and 3. Those favorable formal findings are not at issue on appeal.