

DATE: January 28, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0676

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Steven K. Aldridge, Esq.

Administrative Judge Kathryn Moen Braeman issued a decision dated August 31, 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.

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 rulings and conclusions are arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant dated February 12, 2001. The SOR was predicated on Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant declined a hearing. On the basis of the administrative record the Administrative Judge issued an unfavorable decision, dated August 31, 2001. Applicant appealed.

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 rulings and conclusions were arbitrary, capricious or contrary to law? Applicant's brief contests the Administrative Judge's entire reading of her history, although specific findings of fact by the Judge are not contested, apart from the Judge's finding that Applicant falsified a security clearance application (SF 86) in August 1999. The Board construes Applicant's brief as asserting that the Administrative Judge's rulings and conclusions were arbitrary, capricious or contrary to law.

Applicant's brief explicitly and repeatedly cites to evidence that was not before the Administrative Judge. The Board is prohibited from considering such evidence (See Directive, Additional Procedural Guidance, item E3.1.29, "...No new evidence shall be received or considered by the Appeal Board."). Applicant had the opportunity to present information for consideration by the Judge during the proceedings below. Applicant took advantage of that opportunity when she responded to the File of Relevant Materials. Applicant cannot fairly challenge the Judge's findings and conclusions based on information not presented for the Judge's consideration.

Applicant contends that her financial history does not support a conclusion that she is "at risk of engaging in illegal acts to generate funds." Applicant contends that her failed business venture, her bankruptcy, and other financial problems are a merely a reflection of her fortitude, her willingness to have a go at the "American dream." The Board finds this argument unpersuasive. The Administrative Judge considered the business downfall in a light that was favorable to Applicant, however, she noted Applicant's failure, since the business breakdown and bankruptcy to address and resolve her tax liens. The Administrative Judge's analysis and conclusions regarding Applicant's financial history were reasonable and sustainable given the record evidence.

Applicant contends that her false or incomplete answers to questions on her SF-86 should not be held against her because her answers were reasonable although predicated on a subjective mistaken reading of the questions. Nothing in the record compelled the Administrative Judge to base her analysis of Applicant's answers on any alternative reading of the language in the form. Therefore, the Administrative Judge did not err by relying on the plain language of the form in analyzing Applicant's answers. *See, e.g.*, ISCR Case No. 00-0623 (September 26, 2001) at p. 2 (Judge is not required to accept at face value an applicant's explanation).

Applicant contends that she failed to list certain tax liens because she was not sure of their status at the time she prepared the SF 86. However, she was not asked only about current liens. The form explicitly asked about liens in the last seven years. Similarly her reliance on listing a bankruptcy litigation is not an explanation for her failure list six other litigations to which she had been a party. The Administrative Judge did not err in her analysis of Applicant's false or incomplete answers to these questions.

Applicant seeks to focus on her own positive view of her work history as a source for mitigation of the Administrative Judge's concerns. It is well established that the ability of one party to interpret the case history in a different light than did the Judge is not sufficient to demonstrate error by the Administrative Judge below. The Judge must weigh the record evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. Applicant's arguments fail to persuade the Board that the Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law or reached conclusions that are unsustainable given the record evidence.

Conclusion

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