

DATE: August 15, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0671

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Peregrine D. Russell-Hunter, 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.

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 conclusions were arbitrary, capricious, or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated November 29, 2000, to Applicant. The SOR was based on Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant submitted a response to the SOR, dated December 20, 2000 in which she declined a hearing.

A File of Relevant Material (FORM) was prepared and provided to the Applicant. Applicant responded to the FORM. The Administrative Judge issued a written decision in which he concluded it is not clearly consistent with the national interest to grant or continue a clearance for Applicant. The case is before the Board on appeal from that adverse decision.

**Issue**

Whether the Administrative Judge's conclusions were arbitrary, capricious, or contrary to law? Applicant raises a variety of points in contesting the decision below. Taken together these points constitute an argument that Judge's decision is arbitrary, capricious, or contrary to law.

Applicant cites each of the individual financial accounts which are unpaid and in each case asserts that she was unaware of some aspect of the account. While the Judge largely agreed with those facts, he found against her because there she has no plan in place to pay the creditors. Applicant says she had not done so because she did not know about the debts

until the Defense Security Service (DSS) investigator told her about them. She does not explain her failure to deal with the debts after the DSS told her about them. Therefore her explanation of ignorance fails to demonstrate the Judge erred.

Applicant refers to her failure to disclose an unsatisfied civil judgment entered against her in July 1997 when she completed a security clearance application in June 1999. Applicant then states: "I do not know why I did not list it. To speculate the reason at this point would not be fruitful, yet I do know that it is not my nature to falsify or conceal information thereby making me a security risk to my country." Applicant goes on to point to the Administrative Judge's finding that she "is an honest, motivated, dedicated professional, and an outstanding employee who is highly recommended." Applicant's honesty and professionalism on the job are favorable evidence under the whole person concept. However, given the record evidence in this case, it is not arbitrary or capricious for the Judge to conclude that Applicant is honest and professional on the job, but that she falsified her security clearance application in June 1999. *Cf.* ISCR Case No. 97-0821 (October 15, 1998) at p. 3 (noting that an applicant's honesty with his employer can be separate from applicant's falsifications directed against the federal government).

Applicant cites various mitigating conditions which she believes apply to her case. However, a review of the decision below shows that the Administrative Judge already applied Financial Considerations Mitigating Condition 3. [\(1\)](#)

Applicant would like to have Financial Considerations Mitigating Condition 4. [\(2\)](#)

applied, but the basis for her request is new evidence which the Board may not consider on appeal (Directive, Enclosure 3, Additional Procedural Guidance, Item E3.1.29). She also argues that Personal Conduct Mitigating Condition 2. [\(3\)](#)

is applicable. Personal Conduct Mitigating Condition 2 is designed for a circumstance where an old falsification is at issue and the person has developed a subsequent track record of voluntary cooperation. *See* ISCR Case No. 99-0557 (July 10, 2000) at p. 4. Such is not the case here.

Applicant asserts that she only found out about the Adjudicative Guidelines mitigating conditions by reading the Administrative Judge's decision. The Board notes that Item 2 of the FORM indicates that she was sent the Directive on November 29, 2000. The file also contains a letter that was sent to Applicant on February 7, 2000, which refers to the Directive previously sent to her. Furthermore, the FORM specifically refers to the existence of Adjudicative Guidelines mitigating conditions. Accordingly, it is not tenable for Applicant to claim she did not know about the mitigating conditions until she received the Judge's decision.

Applicant also states that she intends to address her remaining debts and clear up her credit. Applicant's promise to resolve her financial difficulties in the future does not demonstrate the Administrative Judge's adverse conclusions under Guideline F are arbitrary, capricious, or contrary to law. Given the record evidence in this case, it was reasonable for the Judge to conclude that Applicant had failed to demonstrate she had shown that she was taking specific, concrete steps to address and resolve her outstanding debts.

Applicant has failed to demonstrate that the Administrative Judge's conclusions were arbitrary, capricious, or contrary to law.

### **Conclusion**

Applicant has failed to meet her burden on appeal of demonstrating harmful error by the Administrative Judge below. Accordingly, the Board affirms the Administrative Judge's May 4, 2000 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. "The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected emergency, or a death, divorce or separation)"
2. "The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control"
3. "The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily"