

DATE: July 31, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00359

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Robert L. Depper, Jr., Esq.

Administrative Judge James A. Young issued a decision dated April 15, 2003, in which he concluded that it is not clearly in the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

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 adverse decision below is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board affirms the Administrative Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) dated August 26, 2002. The SOR was based on Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

On September 23, 2002, Applicant responded to the SOR in writing and requested a hearing. The hearing was held on April 1, 2003. The Administrative Judge issued a decision on April 15, 2003, 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 Judge's adverse 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 also* 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 the same record. 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

The Administrative Judge entered formal findings in favor of Applicant with regard to Guideline E (Personal Conduct). These formal findings are not at issue on appeal. Therefore, the Board need not discuss the Judge's findings and conclusions regarding Guideline E.

Applicant does not challenge the Administrative Judge's findings of fact about his history of financial difficulties. However, he disagrees with the Judge's conclusions regarding his financial stability. He argues that his financial history indicates that he is financially responsible. Specifically, he contends that the bankruptcy laws were enacted by Congress to assist debtors to improve their financial situation and that declaring bankruptcy is a financially responsible thing to do. He cites 11 U.S.C. § 525 for the proposition that bankruptcy should not be a basis for denial of Applicant's security clearance. He repeats favorable character testimony presented at the hearing. The Board construes this as an argument that the Judge's decision is arbitrary, capricious, or contrary to law.

Citing 11 U.S.C. § 525, Applicant argues that his filing for bankruptcy in 1996 and 2002 should not be a basis for denial of his security application. While Applicant had a legal right to declare bankruptcy, the government is not precluded from considering the negative security implications of his history of recurring financial difficulties. *See* ISCR Case No. 97-0016 (December 31, 1997) at p. 4 (discussing why legal availability of bankruptcy does not preclude consideration of security significance of an applicant's overall history of financial difficulties). Furthermore, the Administrative Judge did not deny Applicant's security clearance based on the fact that Applicant filed for bankruptcy. Rather, the Judge properly considered Applicant's entire financial history. The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). The federal government need not wait until an applicant actually mishandles or fails to safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). An adverse security decision can be based on proof of facts and circumstances that indicate an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information, or the applicant's conduct and circumstances raise security concerns. In this case, Applicant's overall history of financial difficulties provides a rational basis for the Judge's adverse conclusions about Applicant's security eligibility.

In his appeal, Applicant reiterates favorable testimony from the hearing. It is the Judge's duty to weigh favorable and unfavorable evidence and to determine whether the favorable evidence outweighs the unfavorable or vice versa. Applicant's ability to argue for a different interpretation of the record evidence than that adopted by the Administrative Judge is not sufficient to establish that the Administrative Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law.

Conclusion

Applicant has not met his burden of demonstrating error below. Therefore, the decision below is affirmed.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board