

DATE: April 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00878

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Wilford H. Ross issued a decision, dated December 28, 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 issue: whether the Administrative Judge's adverse security clearance decision should be reversed based on new evidence about Applicant's situation.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated April 19, 2001. The SOR was based on Guideline C (Foreign Preference). Applicant submitted an answer to the SOR, in which he stated "I would like a determination made without a hearing." A File of Relevant Material (FORM) was prepared and a copy was provided to Applicant, who was given the opportunity to submit a response to the FORM and provide additional information for consideration in his case. No response to the FORM was received from Applicant. The case was then assigned to the Administrative Judge for determination.

The Administrative Judge issued a written decision, dated December 28, 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 Judge's adverse security clearance decision.

Appeal Issue

There is no presumption of error below and the appealing party has the burden of demonstrating error below. *See, e.g.*, ISCR Case No. 00-0050 (July 23, 2001). On appeal, Applicant does not challenge the Judge's findings or conclusions, but merely offers new evidence about his situation and asks the Board to grant him a security clearance. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, the Board will not review a Judge's findings or conclusions when they are not challenged on appeal.

Conclusion

Applicant has failed to meet his burden of demonstrating 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