

DATE: June 26, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-02213

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge William R. Kearney issued a decision, dated March 22, 2002, 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 Board should reverse the Administrative Judge's decision based on Applicant's current efforts to address and resolve her outstanding debts.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated September 27, 2001. The SOR was based on Guideline F (Financial Considerations). Applicant submitted an answer to the SOR, in which she stated "I wish to have a decision without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was provided to Applicant, who was given an opportunity to respond to the FORM and submit any information she wished to have considered by an Administrative Judge in her case. No response to the FORM was received from Applicant. The case was then assigned to the Judge to make a decision in Applicant's case.

The Administrative Judge issued a written decision, dated March 22, 2002, 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, 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

On appeal, Applicant states the following: "I'm currently in the process of rectifying my situation regarding my financial status, which I have not been able to satisfy in a timely manner. With February 2002 being my last car note payment; I am now able to re-direct my finds to the re-payment of my outstanding finances. I've begun the process by paying off one of my outstanding debts, and I'm currently in the process of consolidating the others."

Applicant does not challenge the Administrative Judge's findings of fact about her history of financial difficulties, but merely offers new evidence about her situation and asks the Board to grant her a security clearance. The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, the Board notes Applicant had an opportunity to respond to the FORM and present information about her financial situation for consideration by the Judge below. By failing to respond to the FORM or presenting information for the Judge's consideration, Applicant waived her opportunity to have such information considered in her case. *See, e.g.*, ISCR Case No. 01-03705 (May 1, 2002) at pp. 2-3.

Because the Administrative Judge's findings of fact are not challenged on appeal, the Board need not address them to decide this appeal. *See, e.g.*, ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (no presumption of error below). The Judge's adverse conclusions about Applicant's history of financial difficulties follow rationally from the Judge's unchallenged factual findings. Furthermore, the Judge's conclusions provide a rational basis for the Judge's adverse security clearance decision. *See, e.g.*, ISCR Case No. 96-0454 (February 7, 1997) at pp. 2-3 (discussing security significance of history of excessive indebtedness or recurring financial difficulties).

Conclusion

Because Applicant has failed to demonstrate error below, 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