

DATE: March 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03055

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Wilford H. Ross issued a decision dated November 7, 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 decision is arbitrary, capricious, or contrary to law?

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant dated March 22, 2001. The SOR was predicated on Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline F (Financial Considerations). Applicant declined a hearing. The Administrative Judge issued an unfavorable decision dated November 7, 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 decision is arbitrary, capricious, or contrary to law? Applicant appealed the Administrative Judge's adverse findings and conclusions on three allegations made under Guideline F (Financial Considerations).⁽¹⁾ Applicant makes assertions on appeal which go beyond the record evidence. The Board is prohibited from considering such assertions (See, Directive, Enclosure 3, Additional Procedural Guidance, Item E3.1.29, "...No new evidence shall be received or considered by the Appeal Board.>").

Applicant contends that the Administrative Judge should have applied four mitigating conditions to his financial history. Specifically, Applicant argues the Judge should have applied Financial Considerations Mitigating Conditions 1 ("The behavior was not recent"), 2 ("It was an isolated incident"), 3 ("The conditions that resulted in the behavior were largely beyond the person's control . . ."), and 6 ("The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"). A review of the record in this case demonstrates that the Administrative Judge's decision not to apply the mitigating conditions was appropriate. Applicant had multiple, continuing debts that he had not made good on for several years, even though a period of unemployment had ended in 1996, and he has been able to support his family comfortably and has not been financially overextended since that time. As the Judge noted, Applicant has known since June 2000 of the government's concern about his financial condition but has taken little concrete action. Applicant offers only promises that he will resolve his outstanding debts within two years. A promise to take action in the future, however sincere, is not a substitute for evidence that Applicant is taking timely, concrete steps to address his delinquent debts. Given the record it was well within the Administrative Judge's discretion not to apply the mitigating factors.

Applicant states he is not financially overextended. The Administrative Judge did not find that he was financially overextended. Rather, the Judge noted Applicant's failure to take timely action to deal with his delinquent debts and concluded Applicant had not mitigated his financial difficulties under Guideline F.

Applicant notes his oath of allegiance to the United States, and his family's financial needs if he loses his security clearance. Neither of those points demonstrates the Administrative Judge's findings and conclusions about Applicant's history of delinquent debts are arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error in the decision below. The Administrative Judge's November 7, 2001 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

1. All the Administrative Judge's remaining findings and conclusions were in Applicant's favor and are not at issue on appeal.