

DATE: March 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03112

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge John G. Metz, Jr. Issued a decision, dated September 26, 2001, in which he concluded that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The 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 issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated February 13, 2001 to Applicant. The SOR was based on Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline F (Financial Considerations). On February 27, 2001, Applicant answered the SOR and requested a decision on the written record in lieu of a hearing.

On May 9, 2001, the government issued a File of Relevant Material (FORM) which included the documentary record against Applicant. Applicant was given a copy of the FORM and provided with an opportunity to submit documentary information in rebuttal to the FORM or to provide the Administrative Judge with other information for consideration in his case. Applicant did not respond to the FORM and the record in the case closed on June 14, 2001. The Administrative Judge issued a written decision, dated September 26, 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 decision.

Applicant filed an appeal brief. Department Counsel did not submit a reply brief.

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 was arbitrary, capricious or contrary to law?

Applicant maintains that documents concerning his problems with alcohol and financial delinquencies introduced by the government in support of its case against him were not accurate and should not have been submitted as evidence. Applicant further states that during the course of a September 9, 1999 meeting with a special agent of the Defense Security Service (DSS), the agent told him that in approximately six months DSS would accomplish a six-month status update check to see if Applicant had resolved any of the outstanding issues relating to his alcohol and financial problems. Applicant now asserts the update was not done and that he was not given a chance to show that he was making good faith efforts to clear his debts and to seek treatment for his illness. The Board construes Applicant's arguments as asserting that the Administrative Judge's decision is arbitrary, capricious or contrary to law.

Applicant's essential complaint is directed toward the manner in which DSS conducted its investigation. Whether the DSS should have conducted a more extensive investigation of Applicant is irrelevant to the merits of the Administrative Judge's decision in this case. Neither the Administrative Judge nor the Board has authority or supervisory jurisdiction over security clearance investigations. Accordingly, neither the Judge nor the Board has any duty or obligation to rule on the sufficiency of a security clearance investigation, or the jurisdiction or authority to order further or additional investigation of an applicant's case. *See e.g.*, ISCR Case No. 00-0430 (July 3, 2001) at p. 3; ISCR Case No., 00-0140 (September 19, 2000) at p. 2; ISCR Case No. 99-0293 (May 5, 2000) at p. 4; ISCR Case No. 96-0311 (December 12, 1996) at p. 2.

Applicant chose to have his case adjudicated without a hearing. Moreover, when given the opportunity to challenge, rebut, or otherwise respond to the government's documentary evidence contained in the FORM and to offer documents of his own in support of his case, Applicant stood silent. By not responding to the FORM, Applicant waived his opportunity to present favorable updated information to the Administrative Judge, and he cannot now complain that his case was decided by the Administrative Judge based on a faulty or incomplete record.

The Administrative Judge's findings and conclusions in this case provide a rational basis for his adverse decision. The Judge's decision cannot be properly criticized by making reference to matters not contained in the record. [\(1\)](#)

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error in the Administrative Judge's decision below. The Administrative Judge's 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. Applicant's appeal brief contains assertions that go beyond the written record. He also included documents with the brief that are outside the record. Similar assertions and documents were submitted with Applicant's Notice of Appeal, dated October 5, 2001. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29.