

DATE: April 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04672

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Kathryn Moen Braeman issued a decision, dated November 27, 2001, in which she 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 issue of whether the Administrative Judge's findings about Applicant's federal tax debts and child support arrearage are erroneous.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated March 22, 2001. The SOR was based on Guideline F (Financial Considerations).

Applicant submitted an answer to the SOR in which he indicated he wanted a decision made in his case without a hearing. A File of Relevant Material (FORM) was prepared. The FORM included a motion to amend the SOR to add a paragraph 2, with subparagraphs a. through e., that cited Guideline E (Personal Conduct) and alleged that Applicant had falsified material facts on a security questionnaire he signed in April 1999 and in a written statement he gave to an investigator in August 1999.

A copy of the FORM was provided to Applicant, who submitted a response to the FORM. The Administrative Judge noticed that Applicant's response to the FORM did not address the SOR paragraph 2 allegations, and gave him an opportunity to respond to those allegations. In fact, the Judge gave Applicant two separate opportunities to respond to the SOR paragraph 2 allegations, and Applicant failed to do so. The Judge granted the motion to amend the SOR to include the paragraph 2 allegations and interpreted Applicant's failure to respond as a general denial of those allegations.

The Administrative Judge issued a written decision, dated November 27, 2001, in which she entered formal findings against Applicant under Guideline F and Guideline E and 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 of the Administrative 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 argues: (1) he has paid his federal tax debts in full; and (2) his child support obligation has been terminated and he has agreed to make payments of \$60.00 a week until the remaining arrearage has been paid in full. The Board construes Applicant's arguments as raising the issue of whether the Administrative Judge's findings about Applicant's federal tax debts and child support arrearage are erroneous.

Federal tax debts. The Administrative Judge found that Applicant owed the Internal Revenue Service for unpaid taxes for tax years 1994, 1995, 1996, 1997, and 1998. That finding is not disputed by Applicant on appeal. The Judge also found that Applicant failed to take action to address those federal tax debts until after he was interviewed by a Defense Security Service Special Agent in October 1999. That finding is not disputed by Applicant on appeal.

The Administrative Judge found that "While [Applicant] states the IRS debts are now resolved, he provided no IRS documentation or canceled checks to substantiate these payments." That finding is clearly erroneous. During the proceedings below, Applicant submitted a print-out that shows the following: (1) he made payments during calendar years 2000 and 2001; (2) the payments were applied to his tax debts for tax years 1994, 1995, 1996, and 1997; and (3) he had a zero balance for tax years 1994, 1995, 1996, and 1997. The only part of the Judge's finding that remains is that Applicant did not present documentation to substantiate his claim that he satisfied his federal tax debt for tax year 1998.

Child support arrearage. The Administrative Judge's findings about Applicant's child support arrearage are supported by the record evidence. Applicant's appeal argument on this aspect of the case fails to demonstrate the Judge erred.

The Administrative Judge's error concerning Applicant's payment of most of his federal tax debts is significant, but it does not warrant remand or reversal under the particular facts of this case. Given the record evidence in this case, it was not arbitrary or capricious for the Judge to draw adverse conclusions under Guideline F from Applicant's failure to address his federal tax debts or his child support obligation in a timely manner.

Furthermore, Applicant has not challenged the Administrative Judge's findings and conclusions under Guideline E (Personal Conduct). As noted earlier in this decision, there is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Judge committed factual or legal error. The Judge's unchallenged findings and conclusions under Guideline E provide a sufficient basis, independent of her findings and conclusions under Guideline F, to render an adverse security clearance decision in this case. The Judge's findings that Applicant falsified material facts in a security questionnaire and a written statement he gave to an investigator provide a

rational basis for her adverse conclusions about Applicant's security eligibility.

Conclusion

Applicant has failed to demonstrate error that warrants remand or reversal. 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