

DATE: April 9, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04256

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision dated November 13, 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 August 23, 2001. The SOR was predicated on Guideline F (Financial Considerations). Applicant declined a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant and she was provided the opportunity to submit a response to the FORM and submit any additional information she wanted the Administrative Judge to consider in her case. She submitted a brief letter in response to the FORM. The Administrative Judge issued an unfavorable decision dated November 13, 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. Initially, Applicant admitted the SOR allegations and indicated that she would file for bankruptcy. In response to the FORM, Applicant submitted a letter (dated October 10, 2001) in which she simply stated she had filed for Chapter 7 bankruptcy. In contrast, her submission on appeal is extensive. The Board is not permitted to consider new evidence on appeal (See, Directive, Enclosure 3, Additional Procedural Guidance, Item E3.1.29, "...No new evidence shall be received or considered by the Appeal Board."). What remains of Applicant's submission on appeal that can be considered by the Board may be construed as asserting that the Administrative Judge's decision below was arbitrary, capricious, or contrary to law.

The Administrative Judge noted the role of Applicant's medical history in 1993 and resultant lost income in Applicant's financial difficulties. He concluded that over the seven intervening years Applicant had made insufficient progress in controlling her indebtedness by any means. Given the record in front the Administrative Judge, it was not unreasonable for him to conclude that Applicant's history of unresolved indebtedness raises security concerns and that she had failed to demonstrate that her financial history was mitigated.

Conclusion

Applicant has failed to meet her burden on appeal of demonstrating that the Administrative Judge erred. Therefore, the Board affirms the 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