

DATE: May 17, 2002

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04425

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

Administrative Judge Barry M. Sax issued a decision, dated January 25, 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, 1002, as amended.

Applicant's appeal presents the issue of whether certain findings and conclusions of the Administrative Judge are supported by the record evidence.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated August 24, 2001 to Applicant. The SOR was based on Guideline E (Personal Conduct) and Guideline F (Financial Considerations). On September 15, 2001, Applicant responded to the SOR and indicated "I would like a decision without a hearing." Department Counsel prepared and submitted to Applicant a File of Relevant Material (FORM). The FORM contained exhibits that comprised the government's documentary case against Applicant. Applicant did not submit a response to the FORM.

The Administrative Judge issued a written decision, dated January 25, 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 asserts: (1) She did not falsify a question on her personnel security questionnaire relating to overdue debts; (2) She did not state that the dollar amount cited in debt allegation 9 (subparagraph 1.i. of the SOR) was inaccurate; (3) Her Personal Financial Statement, which was relied on by the Judge and which listed a monthly dollar amount that Applicant had available for the payment of overdue debt, was only an estimate and did not accurately reflect the actual amount she had left over at the end of the month; and (4) She was denied her clearance based on older credit reports which do not reflect the fact that she now has no outstanding debts.

Falsification. Applicant's assertions on appeal regarding the falsification allegation (subparagraph 2.a. of the SOR) contain no specific claim of error. They are essentially a reiteration of her denial made when she answered the SOR. Thus, she has merely repeated claims made below and has failed to demonstrate the Administrative Judge erred in his findings and conclusions with regard to her falsification of a personnel security questionnaire. The Judge's finding that Applicant engaged in falsification is supported by the record evidence.

Subparagraph 1.i. of the SOR. In an apparent challenge to a finding of the Administrative Judge, Applicant states on appeal that, regarding a debt listed in "allegation 9" (subparagraph 1.i. of the SOR) she never stated that the amount cited was inaccurate but instead stated that she could not find a debit for that amount on credit reports. A review of the record reveals that the Administrative Judge accurately characterized Applicant's response to allegation 1.i. of the SOR. In that response Applicant stated in part: "I deny. I do not believe this amount to be accurate." Applicant's posture on appeal strongly suggests some confusion on her part. Subparagraph 1.i. of the SOR makes reference to a Personal Financial Statement completed by Applicant during the course of an interview. The dollar amount at issue is the stated monthly net remainder available to Applicant to retire overdue debt. It is possible that Applicant's reference on appeal is to subparagraph 1.h. of the SOR, which deals with a single debt. When discussing subparagraph 1.h. in her answer to the SOR, Applicant states that she could not find that "item" in two credit reports. The Judge made no findings that Applicant challenged the accuracy of the debt listed in subparagraph 1.h. Thus, Applicant has failed to demonstrate that the Judge erred.

Personal Financial Statement. Applicant asserted in her answer to the SOR that she was not prepared to supply information about her expenses on the day the statement was prepared and consequently, the monthly remainder figure listed on her financial statement was too high. On appeal she states further that the financial statement was prepared hurriedly and she characterizes it as an estimate that ended up as hard evidence. The Administrative Judge did not accept Applicant's assertions that the statement was inaccurate as he accepted the dollar figure stated therein as Applicant's monthly remainder. It was his job to evaluate the financial statement, which was part of a larger, signed, sworn statement, and assign it appropriate weight in light of Applicant's claims of inaccuracy. The Administrative Judge's acceptance of the representations made in the financial statement reflects a plausible interpretation of the record evidence. Applicant has failed to demonstrate that the Judge erred by rejecting her characterization of the financial statement.

Current debt status. Applicant describes her current debt status as clean and makes reference to recent credit reports that reflect this status. She also claims that the Administrative Judge did not consider the credit reports she submitted to DOHA. There is a rebuttable presumption that an Administrative Judge considered all the record evidence unless the Judge specifically states otherwise. Apart from that presumption, our review of the Judge's decision shows the Judge

referred to the credit reports submitted by Applicant. Furthermore, the Judge specifically noted Applicant's claim that various debts had "fallen off" her credit reports or would "fall off" them in the future. The Judge then stated: "I accept Applicant's statements as meaning that the bulk of her admittedly unpaid debts will, at some point, no longer be reported on her credit histories because of the passage of time. While this may eventually be true, it does not reflect any change in how Applicant views her financial responsibilities, and it is not necessarily a positive factor in determining whether she is fiscally responsible. In fact, the conclusion most obvious from the record is that Applicant has taken advantage of the passage of time and the cessation of any serious efforts to obtain payment from her." The Judge then explained why the facts and circumstances of Applicant's history of financial difficulties raised security concerns under Guideline F. The Judge's analysis is not arbitrary, capricious, or contrary to law. For purposes of Guideline F, it is entirely appropriate for the Judge to conclude the dropping of unsatisfied debts off Applicant's credit report did not extenuate or mitigate her overall history of financial difficulties, or constitute evidence of financial reform and rehabilitation.

### **Conclusion**

Applicant has failed to meet her burden on appeal of demonstrating error below. Accordingly, 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