

DATE: November 22, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-05107

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Kathryn Moen Braeman issued a decision, dated June 14, 2002, 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 decision below.

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 following issues 1) Did the Administrative Judge err by finding Applicant's history of not meeting his financial debts was not mitigated by his bankruptcy? and 2) Did the Administrative Judge err by finding Applicant had failed to disclose his financial difficulties on his security clearance application?

#### **Procedural History**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant dated November 21, 2001. The SOR was based on Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant requested a hearing which was held on April 8, 2002. Subsequently, the Administrative Judge issued an unfavorable decision. Applicant's appeal of that decision is before the Board.

#### **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 Issues**

The Administrative Judge entered formal findings in favor of Applicant with respect to the debts covered by SOR paragraphs 1.b, 1.e, and 1.g. Because the Judge found in Applicant's favor concerning those three debts, the Board need not address the comments Applicant makes about them in his appeal brief.

1) Did the Administrative Judge erred by finding Applicant's history of not meeting his financial debts was not mitigated by his bankruptcy? Applicant argues on appeal that his history of not meeting financial obligations is mitigated by his Chapter 7 bankruptcy. The Administrative Judge below allowed for some mitigation as a result of Applicant's discharge of debts in bankruptcy. Nonetheless, she concluded that Applicant's overall history of financial irresponsibility had not been overcome. The Administrative Judge was primarily concerned that Applicant had not demonstrated current financial responsibility. The Administrative Judge's concerns were reasonable in light of the record evidence that Applicant had accumulated approximately tens of thousands of dollars in multiple bad debts and did not address them until after his wages were garnished. Even then he did not seek to identify most of his debts until a security investigation drew them to his attention. It was not arbitrary or capricious for the Judge to conclude that Applicant's Chapter 7 bankruptcy did little to resolve concerns about his history of failing to meet his financial responsibilities. Applicant has failed to demonstrate error.

Applicant also refers to his effort to negotiate a resolution to the state tax debt covered by SOR paragraph 1.f, worth approximately \$26,971.00. Given the record evidence in this case, <sup>(1)</sup> it was not arbitrary or capricious for the Administrative Judge to conclude that this unresolved state tax debt had adversely impacted Applicant's overall financial situation and was not mitigated.

2) Did the Administrative Judge err by finding Applicant had failed to disclose his financial difficulties on his security clearance application? Applicant argues that the Administrative Judge erred by finding Applicant failed to disclose his financial difficulties on his security application. At the hearing, Applicant claimed he did not disclose various debts on the SF 86 he executed on September 10, 1999 because he did not think they had to be reported on the form. The Administrative Judge found Applicant's explanation to be not credible and concluded Applicant's failure to list his debts was a deliberate falsification. On appeal, Applicant offers an incomplete SF-86 dated August 5, 1999 and argues that he did not provide the adverse financial information because the form did not ask him to provide it. The Board is not allowed to consider new evidence on appeal. Even if the Board could consider Applicant's new evidence it would not be persuasive because it carries a different date than that alleged in the SOR. Given the record evidence in this case, the Judge had a rational basis to find Applicant falsified the SF 86 as alleged in the SOR. Applicant has failed to demonstrate error.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error 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. On appeal, Applicant submitted a July 29, 2002 letter from the Internal Revenue Service. That letter, which postdates the Administrative Judge's decision, constitutes new evidence, which the Board cannot consider. *See* Directive, Additional Procedural Guidance, Item E3.1.29.