

DATE: August 5, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-05139

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Joseph Testan issued a decision, dated May 23, 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, 1992, as amended.

Applicant's appeal presents the following issue: whether the Administrative Judge's adverse security clearance decision should be reversed or remanded in light of Applicant's stated intention to file for bankruptcy.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated November 2, 2001. The SOR was based on Guideline F (Financial Considerations). A hearing was held on April 18, 2002. The Administrative Judge issued a written decision, dated May 23, 2002, in which he concluded that 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

The Administrative Judge found that Applicant has a history of financial difficulties, which covers the period 1995-present, and that Applicant is not likely to satisfy his outstanding debts in the foreseeable future. The Judge concluded that Applicant's history of unresolved financial difficulties warranted an adverse security clearance decision.

On appeal, Applicant does not challenge the Administrative Judge's findings of fact. Rather, Applicant states that "I am in the process currently of filing for Bankruptcy and am asking that I be granted an appeal. I would appreciate this be considered."

Applicant's stated intention to file for bankruptcy constitutes new evidence, which the Board cannot consider on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, Applicant cannot fairly claim the Administrative Judge's decision is erroneous based on matters not presented for the Judge's consideration.

The Administrative Judge's unchallenged findings of fact provide a rational basis for his adverse conclusions about Applicant's security eligibility, and his adverse security clearance decision.

Conclusion

Applicant has failed to demonstrate error below. Therefore, 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