

DATE: September 13, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-05945

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge John R. Erck issued a decision, dated May 22, 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.

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 issues: (1) whether the Administrative Judge erred by finding Applicant had various delinquent debts; (2) whether the Administrative Judge erred by applying Financial Considerations Disqualifying Conditions 1 and 3; and (3) whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board affirms the Administrative Judge's decision.

### **Procedural History**

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated October 5, 2001. The SOR was based on Guideline F (Financial Considerations). A File of Relevant Material (FORM) was prepared. A copy of the FORM was provided to Applicant. After Applicant submitted a response to the FORM, the case was assigned to the Administrative Judge for determination. The Administrative Judge issued a decision, dated May 22, 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 Issues**

1. Whether the Administrative Judge erred by finding Applicant had various delinquent debts. The Administrative Judge found that Applicant had satisfied the debts covered by SOR paragraphs 1.a, 1.b, 1.c, 1.d, and 1.e, and entered formal findings in favor of Applicant with respect to those five debts. The Judge also found that the debts covered by SOR paragraphs 1.g and 1.h were the same debt, and entered a formal finding in favor of Applicant with respect to SOR paragraph 1.h based on that finding. The Judge's findings and conclusions about SOR paragraphs 1.a through 1.e and 1.h are not at issue on appeal. However, Applicant challenges the Judge's findings that she owed delinquent debts as alleged in SOR paragraphs 1.f, 1.g, 1.i, 1.j, and 1.k.

On appeal, Applicant states: (a) she is trying to clear up discrepancies about her finances that appear in her security clearance application and her statement to a Defense Security Service investigator; (b) she has been honest and forthright with the government about her financial problems and has not tried to mislead anyone about them; (c) "I can't explain the reason for the confusion [about my finances] in either of my application forms, but I can assure you that no malicious attempts to deceive anyone were intended"; (d) although she has been forthcoming about her delinquent debts, she did not intend to admit any delinquent debts that were not incurred by her; and (e) she has gone to great lengths to clear from her credit report debts that were not hers. The Board construes Applicant's statements as raising the issue whether the Administrative Judge erred by finding that she had delinquent debts as alleged in SOR paragraphs 1.f, 1.g, 1.i, 1.j, and 1.k.

To the extent Applicant refers to having succeeded in getting credit reporting agencies to remove debts from her credit report, Applicant is presenting new evidence, which the Board cannot consider on appeal. Applicant had an opportunity to present information for consideration by the Administrative Judge in response to the FORM. Applicant took advantage of that opportunity and submitted a response to the FORM. Applicant cannot fairly claim the Judge made erroneous factual findings based on her referring to evidence that was not presented for the Judge to consider.

The Administrative Judge specifically noted Applicant's denials that she owed delinquent debts as alleged in SOR paragraphs 1.f, 1.g, 1.i, 1.j, and 1.k and explained why he did not accept Applicant's denials. Specifically, the Judge decided to accept Applicant's admissions of various delinquent debts that appear in her security clearance application (FORM, Item 4) and her October 19, 2000 written statement (FORM, Item 5) and reject her later denial of those debts (Applicant's answer to SOR; Applicant's response to FORM). The Judge's reasoning was not arbitrary, capricious, or contrary to law. Considering the record evidence as a whole, the Judge's challenged findings are sustainable. *See* Directive, Additional Procedural Guidance, Item E3.1.32.1.

2. Whether the Administrative Judge erred by applying Financial Considerations Disqualifying Conditions 1 and 3. The Administrative Judge applied Financial Considerations Disqualifying Conditions 1 and 3 to the delinquent debts he found Applicant owed. Applicant contends the Judge erred by applying those two Disqualifying Conditions.

Applicant argues the Administrative Judge erred by applying Financial Considerations Disqualifying Condition 1 <sup>(1)</sup> because she does not owe those delinquent debts, and her mistaken admission of those debts is not proof that she has excessive debts. As discussed earlier in this decision, the Board has sustained the Judge's findings that Applicant had delinquent debts as alleged in SOR paragraphs 1.f, 1.g, 1.i, 1.j, and 1.k. Given those findings, the Judge had a rational basis for applying Financial Considerations Disqualifying Condition 1.

Applicant argues the Administrative Judge erred by applying Financial Considerations Disqualifying Condition 3 <sup>(2)</sup>

because he accepted Applicant's evidence that she had satisfied various delinquent debts (*i.e.*, the debts covered by SOR paragraphs 1.a through 1.e). Applicant's argument does not demonstrate the Judge erred. The Judge's sustainable findings about Applicant's delinquent debts provide a rational basis for the Judge's application of Financial Considerations Disqualifying Condition 3.

3. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. In addition to Applicant's specific claims of error by the Administrative Judge, Applicant asserts: (a) she does not try to live beyond her means and is not financially overextended; and (b) she has paid her taxes and always has paid her debts and honored her obligations to the best of her ability. The Board construes these statements as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). The federal government need not wait until an applicant actually mishandles or fails to safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). In this case, the Judge's findings of fact about Applicant's unresolved delinquent debts provide a rational basis for the Judge's adverse conclusions about her security eligibility. *See, e.g.*, ISCR Case No. 96-0454 (February 7, 1997) at pp. 2-3 (discussing security significance of history of excessive indebtedness or recurring financial difficulties). Accordingly, the Judge's adverse security clearance decision is not arbitrary, capricious, or contrary to law.

### Conclusion

Because Applicant has failed to demonstrate error below, 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

1. "A history of not meeting financial obligations."

2. "Inability or unwillingness to satisfy debts."