

DATE: August 14, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-06561

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Burt Smith issued a decision, dated April 21, 2003, 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 issue of 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 May 22, 2002. The SOR was based on Guideline F (Financial Considerations). The Administrative Judge issued an adverse security clearance decision dated April 21, 2003. The case is before the Board on Applicant's appeal.

### **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 also* 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 the same record. 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**

In his appeal brief, Applicant indicates that some of the debts cited by the Administrative Judge have disappeared from his credit report and that he has continued to improve his financial situation by steadily paying off his debts. Any changes in Applicant's financial situation since the hearing constitute new evidence. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Accordingly, the Board will address only those appeal arguments that do not rely on new evidence.

In his appeal brief, Applicant does not challenge the findings of the Administrative Judge about Applicant's history of financial difficulties. He restates testimony he gave at the hearing, and in some cases attempts to expand upon that testimony. He asks that the Board change the Judge's decision to a favorable one because he is not a security risk. He notes that he has held a security clearance for twenty years. The Board construes those arguments as raising the issue of whether the Judge's decision is arbitrary, capricious, or contrary to law.

As noted earlier in this decision, there is no presumption of error below, and the appealing party must demonstrate error by the judge. Because Applicant has not made any specific claim of factual error below, there is no basis for the Board to conclude the Judge's findings about Applicant's history of financial difficulties are erroneous.

With regard to Applicant's argument that he is not a security risk and has held a security clearance for twenty years, the Board concludes it fails to show the Administrative Judge's 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 government is not required to wait until a person commits a security violation before it denies or revokes access to classified information. All that is required for denial or revocation of a clearance is proof of facts and circumstances which indicate that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information, or otherwise raise security concerns. *See, e.g.*, ISCR Case No. 99-0123 (January 11, 2000) at pp. 3-4. Here, the Judge's unchallenged findings of fact provide a rational basis for the Judge's adverse conclusions under Guideline F. Furthermore, the Judge articulated a rational basis for why he concluded Applicant's current financial conduct raises security concerns in light of Applicant's past history of financial difficulties.

### **Conclusion**

Applicant has failed to meet his burden of demonstrating error below. The Board affirms the Administrative Judge's adverse security decision for the reasons stated herein.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board