

DATE: September 5, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06338

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge John G. Metz, Jr. issued a decision, dated May 16, 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 issue of whether Applicant can augment the record with evidence supportive of his case. For the reasons set forth below, 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 September 17, 2001. The SOR was based on Guideline C (Foreign Preference) and Guideline B (Foreign Influence). Applicant submitted an answer to the SOR, in which he stated, "I wish to have a decision without a hearing." A File of Relevant Material (FORM) was prepared, and a copy of the FORM was provided to Applicant. After Applicant's response to the FORM was received, the case was assigned to the Administrative Judge for determination. The Administrative Judge issued a written decision, dated May 16, 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 security clearance 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 states the following, "I wish to have the opportunity to prove in front of the Appeal Board [t]hat I am no longer a [citizen of a foreign country, hereinafter referred to as 'FC'], I do not have any financial interests in [FC]."

The Board construes Applicant's appeal submission as a request to augment the record with evidence that he is no longer a citizen of FC and no longer has property interests there. Even if Applicant had submitted such evidence, the Board could not consider it as it is prohibited from considering new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Therefore, the Board cannot allow Applicant the opportunity to present new evidence on appeal.

Applicant does not argue on appeal that the Administrative Judge committed any error. There is no presumption of error below. 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