

DATE: March 27, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09691

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

#### **FOR APPLICANT**

Peter G. Webb, Esq.

Administrative Judge Elizabeth M. Matchinski issued a decision, dated December 11, 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.

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 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 January 30, 2002. The SOR was based on Guideline F (Financial Considerations). A hearing was held on September 20, 2002.

The Administrative Judge issued a written decision, dated December 11, 2002, in which she 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 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<sup>(1)</sup>

The Administrative Judge made findings of fact concerning Applicant's history of financial difficulties. The Judge concluded that Applicant's unresolved delinquent debts raised security concerns under Guideline F and warranted an adverse security clearance decision. On appeal, Applicant does not challenge the Judge's findings that she had delinquent debts. Rather, Applicant argues: (a) the delinquent debts covered by SOR subparagraphs 1.a, 1.b, 1.e and 1.g are unenforceable under state law because they are older than the state's three-year statute of limitations; (b) the Administrative Judge erred by relying on unenforceable debts to draw adverse conclusions under Guideline F; and (c) the remaining delinquent debts (covered by SOR subparagraphs 1.c and 1.d), which total slightly less more than \$200, are insufficient to justify adverse conclusions under Guideline F. Applicant's arguments raise the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Applicant's argument concerning the unenforceability of certain delinquent debts under state law fails to demonstrate the Administrative Judge erred. First, security clearance decisions are not controlled or limited by any statute of limitation.

<sup>(2)</sup> Second, absent an explicit act of Congress to the contrary, the federal government is not bound by state law in carrying out its functions and responsibilities.<sup>(3)</sup> Applicant does not cite any federal statute that requires the federal government to be bound by state law in making security clearance decisions. Third, a security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.<sup>(4)</sup> For all the foregoing reasons, it was not arbitrary, capricious, or contrary to law for the Judge to consider, under Guideline F, all of Applicant's delinquent debts, including those that might be unenforceable by her creditors.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information.<sup>(5)</sup> Security clearance decisions are not an exact science, but rather involve predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances.<sup>(6)</sup> The federal government need not wait until an applicant mishandles or fails to safeguard classified information before it can deny or revoke access to classified information.<sup>(7)</sup> Rather, the federal government can deny or revoke access to classified information based on an applicant's conduct or circumstances that raise security concerns even in the absence of any security violations. A history of financial difficulties raises security concerns.<sup>(8)</sup> Given Applicant's history of delinquent debts and the fact that she had unresolved delinquent debts as of the date of the hearing in her case, Applicant had a heavy burden of presenting evidence to demonstrate extenuation, mitigation, or changed circumstances sufficient to warrant a favorable security clearance decision.<sup>(9)</sup> Given the record evidence in this case, it was not arbitrary or capricious for the Judge to conclude that Applicant had failed to demonstrate a favorable change in her financial behavior that warranted a favorable security clearance decision under the clearly consistent with the national interest standard.

### Conclusion

Applicant has failed to demonstrate error below. Accordingly, the Board affirms the Administrative Judge's adverse security clearance decision.

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

1. The Administrative Judge entered formal findings in favor of Applicant with respect to SOR subparagraphs 1.f and 1.h. Those favorable formal findings are not at issue on appeal.
2. *See, e.g.*, ISCR Case No. 00-0030 (September 20, 2001) at p. 3.
3. *See, e.g.*, ISCR Case No. 99-0382 (May 3, 2000) at p. 3 n.3; DISCR Case No. 87-0438 (April 18, 1989) at p. 4.
4. *Cf.* ISCR Case No. 00-0345 (December 12, 2001) at p. 3 (discharge of debt in bankruptcy does not preclude consideration of applicant's history of financial problems); ISCR Case No. 99-9020 (June 4, 2001) at p. 6 (although an applicant legally may rely on the running of a statute of limitations to avoid paying a debt, such reliance on a statute of limitations does not constitute a good faith effort to resolve debts within the meaning of Financial Considerations Mitigating Condition 6).
5. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).
6. *Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988).
7. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).
8. *See, e.g.*, ISCR Case No.96-0454 (February 7, 1997) at p. 2 (discussing negative security significance of a history of excessive indebtedness or recurring financial difficulties).
9. *See* Directive, Additional Procedural Guidance, Item E3.1.15.