

DATE: September 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-09781

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 June 25, 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 still owed certain debts; and (2) whether the Administrative Judge failed to apply the whole person concept to Applicant's case. 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 November 26, 2001. The SOR was based on Guideline F (Financial Considerations).

Applicant submitted an answer to the SOR, in which he stated "I prefer to have a decision without a hearing." A File of Relevant Material (FORM) was prepared, and Applicant was given a copy of the FORM. 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 June 25, 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 still owed certain debts. The Administrative Judge found that Applicant owed the debts covered by SOR paragraphs 1.a through 1.i, and that those debts were still unsatisfied. On appeal, Applicant asserts that he has satisfied the debts covered by SOR paragraphs 1.a, 1.b, and 1.c. Because Applicant does not challenge the Judge's findings about the debts covered by SOR paragraphs 1.d through 1.i, the Board need not discuss those findings.

Applicant's assertion concerning satisfaction of the debts covered by SOR paragraphs 1.a and 1.b is based on new evidence attached to his appeal brief. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29.

Applicant cites FORM Item 6 in support of his assertion that the debt covered by SOR paragraph 1.c has been satisfied. A review of FORM Item 6 persuades the Board that Applicant's claim of error is not frivolous, but it falls short of demonstrating the Administrative Judge erred by finding Applicant had still not satisfied the debt covered by SOR paragraph 1.c. Considering the record as a whole, the Judge's finding that Applicant owed the debt covered by SOR paragraph 1.c reflects a reasonable interpretation of the record evidence and is sustainable. *See* Directive, Additional Procedural Guidance, Item E3.1.32.1 (standard of review of findings of fact).

2. Whether the Administrative Judge failed to apply the whole person concept to Applicant's case. Applicant contends the Administrative Judge erred by not applying the whole person concept. In support of this contention, Applicant argues: (a) the Judge improperly relied on the documentation Applicant submitted to draw an adverse inference against him because he did not submit documentation to support his statements that his debts have been satisfied; and (b) the Judge ignored the documentation Applicant submitted "to provide a more comprehensive view of the applicant."

(a) Applicant had the burden of presenting evidence to "to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security clearance decision." Directive, Additional Procedural Guidance, Item E3.1.15. Given the information contained in the FORM that shows Applicant has a history of financial difficulties, Applicant had the burden of presenting evidence to demonstrate reform, rehabilitation, or changed circumstances sufficient to justify a conclusion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The Administrative Judge was not required to accept at face value Applicant's undocumented claims that he has addressed or resolved his financial problems. Indeed, it was legally permissible for the Judge to consider Applicant's failure to submit documentation to support or corroborate his claims that he had satisfied various debts. *See, e.g.*, ISCR Case No. 00-0104 (March 21, 2001) at p. 3 ("The absence of documentation to corroborate claims of satisfying debts is relevant in deciding whether such claims should be accepted."). Accordingly, Applicant's claim of error on this aspect of the Judge's decision lacks merit.

(b) There is a rebuttable presumption that an Administrative Judge considered all the record evidence unless the Judge specifically stated otherwise. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at p. 2. That presumption is not rebutted merely because the appealing party can point to information in the record evidence that was not mentioned or discussed in the Judge's decision. *See, e.g.*, ISCR Case No. 98-0809 (August 19, 1999) at p. 6 (no requirement that Administrative

Judge discuss every piece of record evidence).

Although the nonfinancial information Applicant submitted in response to the FORM is relevant under the whole person concept (Directive, Item E2.2.1), the Administrative Judge had to consider and weigh it in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-06594 (August 7, 2002) at p. 3 (Administrative Judge must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*). Considering the record evidence of Applicant's history of financial difficulties, the nonfinancial information submitted by Applicant did not compel the Judge, as a matter of law, to render a favorable security clearance decision. Considering the record as a whole, the Judge's findings and conclusions about Applicant's history of financial difficulties provide a rational basis for the Judge's adverse conclusions under Guideline F. *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).

Conclusion

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

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