

DATE: January 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13740

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Barry M. Sax issued a decision dated July 31, 2002 in which he concluded it is not clearly consistent with the national interest to grant or continue a clearance for Applicant. Applicant appealed.

The 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. Did the Judge make errors in his findings of fact?; 2. Did the Judge fail to consider pertinent record evidence?; and 3. Did the Judge apply the Adjudicative Guidelines properly? For the reasons that follow, the Board affirms the Administrative Judge's adverse security clearance decision.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant dated February 6, 2002. The SOR was based on Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). Appellant declined a hearing and the case was decided on the administrative record. The Administrative Judge issued an unfavorable decision dated July 31, 2002. The case is before the Board on Applicant's appeal from that 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

The Administrative Judge found Applicant had ten recent delinquent accounts, with seven still unpaid. The Judge also found Applicant had made two inadequately explained false statements on his security application. The Judge concluded that the matters were disqualifying under Guidelines F, E and J.

1. Did the Judge make errors in his findings of fact? Applicant challenges many of the Administrative Judge's findings of fact. These may be broken down into several categories. Applicant essentially argues that: (a) the Judge made a factual mistake concerning Applicant's age; (b) the Judge erred in finding that Applicant has had \$1,641.00 per month available to him to pay off his delinquent debts; (c) the Judge erred in finding that Applicant had failed to satisfy certain debts; (d) the Judge erred in finding that Applicant engaged in willful falsifications when he omitted certain information about his delinquent debts from his security questionnaire; and (e) the Judge erred by failing to give due consideration to favorable evidence about Applicant's character and job performance.

Applicant correctly notes the Judge misstated Applicant's age in the synopsis of the decision. However, the Judge correctly stated Applicant's age in the body of the decision, and a reading of the Judge's decision as a whole persuades the Board that this error is harmless because the Judge's adverse conclusions do not turn on Applicant's age. Applicant persuasively argues the Judge's findings concerning SOR paragraphs 1.g and 1.h are erroneous. However, the Judge's remaining findings about Applicant's history of financial difficulties and falsification of the security questionnaire reflect a reasonable interpretation of the record evidence and are sustainable. Given the totality of the Judge's sustainable findings about Applicant's history of financial difficulties and falsification of the security questionnaire, the Judge's factual errors concerning SOR paragraphs 1.g and 1.h are harmless.

2. Did the Judge fail to consider pertinent record evidence? Applicant argues that the Judge failed to consider favorable record evidence including Applicant's uncorroborated statements that several of the debts were now satisfied, Applicant's statements that the false answers on his security clearance application were errors rather than intentional lies, and a letter from his supervisor. There is a rebuttable presumption that the Administrative Judge considered all the record evidence. The Judge is not required to discuss or give the same weight to each piece of evidence. A review of the Judge's findings and conclusions demonstrates that the decision (except for a few harmless errors) represents a sustainable interpretation of the record. Applicant has failed to demonstrate that the Judge failed to consider the record evidence.

Applicant also claims the Administrative Judge had several procedural options available to him that, had they been exercised, would have cast his case in a more favorable light. Specifically, Applicant asserts that if the Judge chose not to believe Applicant's version of events, the Judge (1) could have granted Applicant more time to provide proof of his debt payments; (2) could have requested another investigation by another investigative party; or (3) could have placed Applicant on probation. Regarding a time extension to allow further development of the record, Applicant's assertion is untimely as the record in the case below does not indicate he made such a request directly to the Judge. Moreover, requests for time extensions are largely within the discretion of the Administrative Judge. Applicant fails to establish the Judge erred in this instance. Regarding the proposals concerning an additional investigation and the placement of Applicant on probation, the Directive does not authorize DOHA Administrative Judges to engage in either of these acts. Applicant's arguments concerning them therefore fail to demonstrate the Judge erred.

3. Did the Judge apply the Adjudicative Guidelines properly? Applicant disputes the Administrative Judge's application of the Adjudicative Guidelines to Applicant's case. To a great extent Applicant's claims are predicated on his interpretation of the facts of the case. Since the Administrative Judge did not share Applicant's view that the record showed Applicant's debts were paid and that his false statements were explained as errors, it follows that the Judge

applied the Adjudicative Guidelines in accord with his view of underlying facts rather than Applicant's view. The Judge articulated a rational analysis of Applicant's case that is founded on his generally sustainable view of the record evidence. He concluded that Applicant's misconduct was pertinent, recent, and not isolated. The Judge concluded that Applicant's conduct was disqualifying and unmitigated under Guidelines F, E, and J. Applicant's alternative analysis of his situation, relying on a different interpretation of the record evidence fails to demonstrate the Judge erred in applying the Adjudicative Guidelines.

Conclusion

Applicant has failed to demonstrate harmful error in the decision below. The Administrative Judge's adverse decision is affirmed.

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