

DATE: January 8, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-13815

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter , Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Joseph Testan issued a decision dated July 25, 2002, in which he concluded that it is not clearly consistent with the national interest to grant or continue a security 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 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 February 4, 2002. The SOR was based on Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

Applicant submitted an answer to the SOR, in which he stated, "I would like to have a decision without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant and he was given an opportunity to submit a response to the FORM. Applicant did respond to the FORM and made a submission.

The case was then assigned to the Administrative Judge for consideration. The Judge issued a written decision, dated July 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 Issue**

On appeal, Applicant asserts: (a) other than a single event of not paying on one credit card account, his credit history is positive rather than negative and his credit report is not that of an individual who is financially overextended and at risk to engage in illegal acts to generate funds; (b) Applicant was initially unable to pay off the one credit card account because he lacked funds, but his financial shortfall lasted only for a brief period over 10 years ago and he held off payment only because the creditor and the bank would not work with him and he did not like the way he was being treated; (c) Applicant did not list the delinquent credit card account on his security questionnaire because he mistakenly believed that the debt could no longer legally be collected and was therefore of no consequence; and (d) Applicant did not commit any criminal action as he did not attempt to deceive or mislead anyone by answering the security questionnaire the way he did. The Board construes Applicant's assertions as raising the issue of whether the Judge's adverse security decision is arbitrary, capricious, or contrary to law.

Applicant's ability to cite to favorable evidence in the record regarding his financial profile does not establish that the Judge erred. The Judge was required to evaluate both the favorable and unfavorable record evidence in the process of evaluating Applicant's initial inability to satisfy a credit card debt and Applicant's subsequent, longstanding refusal to resolve the debt because he felt he was being poorly treated. It was reasonable and proper for the Judge to consider the security significance of Applicant's refusal to pay the debt and the stated reasons for the refusal and to conclude that such actions reflected negatively on Applicant's judgment and reliability, notwithstanding the fact that Applicant's financial history was otherwise favorable. There is sufficient record evidence to support the Administrative Judge's finding against Applicant under the Financial Considerations Guideline.

Applicant's arguments concerning the reasons behind his failure to list his long outstanding credit card debt on his security questionnaire do not establish error on the part of the Administrative Judge. The ability of a party to argue for an alternative interpretation of the record evidence is insufficient to establish that the findings and conclusions reached by the Judge were arbitrary, capricious or contrary to law. Faced with an issue as to Applicant's state of mind at the time of the completion of the security questionnaire, the Administrative Judge was charged with the task of ascertaining Applicant's intent from circumstantial evidence. A review of the record leads the Board to conclude that the Judge's findings and conclusions are sustainable by that record. Because the Judge's findings and conclusions on the falsification issue are sustainable, his conclusions regarding Applicant's engaging in criminal conduct are sustainable as well.

### **Conclusion**

Because Applicant has failed to demonstrate error below, the Board affirms the Administrative Judge's adverse security 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