

DATE: July 23, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-15230

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Applicant has appealed the February 12, 2003 decision of Administrative Judge Darlene Lokey Anderson, in which the Judge concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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 the Administrative Judge's adverse conclusions are 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 July 10, 2002. The SOR was based on Guideline F (Financial Considerations). A hearing was held on December 17, 2002. The Administrative Judge issued a decision, dated February 12, 2003, in which the Judge 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 Administrative 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. 99-025 (October 19, 2000) at p. 2.

When a challenge to an Administrative Judge's ruling 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**

Applicant's appeal brief contains several factual assertions that go beyond the record evidence below and seeks to introduce new evidence for the Board to consider. The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item E3.1.29. Applicant had the opportunity to present evidence for consideration by the Administrative Judge in his case. Applicant cannot fairly challenge the Judge's decision based on evidence that was not presented to the Judge. Accordingly, the Board will address only those appeal arguments Applicant makes that do not rely on new evidence.

Whether the Administrative Judge's adverse conclusions are arbitrary, capricious, or contrary to law. (1) Applicant appeals on the grounds that the Administrative Judge made numerous errors in the decision-making process. Specifically, Applicant argues that the Administrative Judge did not review all the evidence, including evidence which indicates a steady recovery process from his delinquent debts between 1998 and the date of the hearing. Applicant also argues that the Administrative Judge failed to acknowledge his plan for handling his remaining debts which was presented at the hearing. Applicant states that "What appears to have happened was that only a count of items not satisfied was reviewed without the benefit of the macro viewpoint of a plan for satisfying the greatest amount of debt." Applicant argues that he presented a clear analysis at the hearing on the road forward for resolution of any financial obligations that were still owed and a plan for continued investigation into those debt items still in question. Applicant reiterates his contention that the SOR was based on a credit report that included items he was not aware of until the SOR and that a number of the specific items were in dispute and required verification before he would pay the debt. Applicant also disagrees with the Administrative Judge's conclusion that the amount of delinquent debt remaining is "excessive".

Applicant presents a discussion of the particular debts that were considered by the Administrative Judge. The fact that Applicant disagrees with the conclusions drawn by the Administrative Judge is not conclusive to this Board. Rather, the question is whether the Judge's conclusions are supported by substantial record evidence and do not reflect arbitrary or capricious reasoning.

The record evidence shows the age and amounts of the Applicant's delinquent debts. The Administrative Judge's decision acknowledges the Applicant's history of job lay-offs that could mitigate security concerns, but concludes that the Applicant had made little or no effort to pay his past due debts and that there was no real plan or method established to pay his past debts. Considering the record as a whole, there is sufficient evidence to sustain the Judge's conclusion that because of the uncertainty of Applicant's plan and the size of the Applicant's outstanding indebtedness, Applicant's history of financial difficulties raised security concerns under Guideline F. Applicant's appeal arguments fail to demonstrate that the Judge erred by finding that because of the scope and nature of the Applicant's financial conduct there is a nexus or connection with his security clearance eligibility. Applicant's argument that "[i]t's rather difficult to conclude that one could engage in illegal acts that could jeopardize the national security based on such a small amount" is not persuasive to overcome the Administrative Judge's conclusion to the contrary.

Applicant reiterates that he previously held a Department of Defense Top Secret clearance for 20 plus years and in this case is only applying for a Secret Clearance and that he is a valuable member of the team involved in the National Defense Program. Neither of those points demonstrates the Administrative Judge's findings and conclusions about Applicant's history of delinquent debts are arbitrary, capricious, or contrary to law.

### **Conclusion**

Applicant has failed to meet his burden of demonstrating error by the Administrative Judge. 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: Christine M. Kopocis

Christine M. Kopocis

Administrative Judge

Member, Appeal Board

1. The Administrative Judge entered favorable formal findings with respect to the debts covered by SOR subparagraphs 1.b, 1.c, 1.f, 1.h, 1.k, 1.o, and 1.p. Those favorable formal findings are not at issue on appeal.