

DATE: April 29, 2003

In Re:

-----

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20445

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Applicant has appealed the February 10, 2003 decision of Administrative Judge Paul J. Mason, 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 following issues: (1) whether the Administrative Judge erred by finding that Applicant still has unresolved debts; and (2) 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 August 8, 2002. The SOR was based on Guideline F (Financial Considerations).

Applicant submitted an answer to the SOR in which he stated "I do not wish to have a hearing." A File of Relevant Material (FORM) was prepared and a copy of the FORM was given to Applicant, who submitted a response to the FORM.

The case was assigned to the Administrative Judge for determination. The Judge issued a written decision 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 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 Issues**

1. Whether the Administrative Judge erred by finding that Applicant still has unresolved debts. The Administrative Judge found that Applicant had unsatisfied debts as alleged in the SOR and that he had failed to present convincing evidence that the debts had been satisfied. On appeal, Applicant asserts: (a) he has made extensive efforts to pay off and settle his debts; and (b) many debts that he has paid off still have not yet appeared as satisfied on his credit report. The Board construes Applicant's assertions as raising the issue of whether the Judge erred by finding that Applicant still had unresolved debts.

There is record evidence that would support the Administrative Judge's findings that Applicant owed the debts alleged in the SOR. Furthermore, the Judge explained why he did not find persuasive Applicant's uncorroborated claims that he had paid off and settled various debts. The Judge was not required to accept at face value Applicant's uncorroborated claims about paying off his delinquent debts. *See, e.g.*, ISCR Case No. 99-0012 (December 1, 1999) at p. 3 ("Failure to present documentation in support of an applicant's claims about financial matters is a factor to be considered by a Judge in evaluating such claims."). Applicant has failed to demonstrate the Judge erred by finding Applicant had unresolved debts as alleged in the SOR.

Applicant also states "I will continue to follow up on the transactions to these credit bureaus." This statement fails to demonstrate error below. First, the Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Second, Applicant cannot fairly challenge the Judge's factual findings based on a proffer of evidence that was not presented for the Judge's consideration in the proceedings below. Third, Applicant is not entitled to have the record in his case kept open indefinitely. *See, e.g.*, ISCR Case No. 00-0250 (February 13, 2001) at pp. 3-4 (Board citing Supreme Court decision on the need for administrative finality to support a conclusion that a party is not entitled to have the case reopened to allow the introduction of evidence that comes into existence after the close of the record).

2. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. Applicant also argues: (a) "I hope that age discrimination is not preventing me to (sic) obtain this clearance"; (b) he does not have a criminal record of any kind; (c) he served six years in the National Guard; (d) his professional and work records are favorable; and (e) he has the ability to contribute to the military to help support the United States. The Board construes these arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

(a) There is a rebuttable presumption that an Administrative Judge is impartial and unbiased, and a party seeking to rebut that presumption has a heavy burden of persuasion on appeal. *See, e.g.* ISCR Case No. 01-07360 (April 10, 2002) at p. 3. Furthermore, there is a rebuttable presumption that agency officials carry out their duties in good faith. *See, e.g.*, ISCR Case No. 00-0030 (September 20, 2001) at p. 5. Nothing in the Judge's decision indicates or suggests that he was drawing any improper or legally impermissible conclusions from Applicant's age. Applicant's unadorned speculation about the Judge's motivation falls far short of raising any colorable claim of age discrimination or other bias by the Judge.

(b) The absence of any evidence that Applicant has a criminal record does not render the Administrative Judge's adverse decision arbitrary, capricious, or contrary to law. Although criminal conduct can raise security concerns, it is not the only conduct that can do so. A history of recurring financial difficulties can raise security concerns. *See, e.g.*, ISCR Case

No. 96-0454 (February 7, 1997) at p. 2 (discussing security concerns raised by history of excessive indebtedness or recurring financial difficulties). The Judge's findings and conclusions about Applicant's history of financial difficulties provide a rational basis for his adverse conclusions about Applicant's security eligibility.

(c/d) The record evidence of Applicant's military service, and his professional and work records did not preclude the Administrative Judge from making an adverse security clearance decision. Security clearance decisions are not limited to consideration of an applicant's conduct during duty hours. Off-duty conduct that raises security concerns can be considered in assessing an applicant's security eligibility. *See, e.g.*, ISCR Case No. 01-01642 (June 14, 2002) at p. 6. In this case, Applicant's history of financial difficulties provided a rational basis for the Judge's expressed concerns about Applicant's security eligibility. The limited record evidence about Applicant's military service and his professional and work record was not favorable evidence of a degree or kind that would compel the Judge, as a matter of law, to find in Applicant's favor.

(e) There is no record evidence about Applicant's ability to contribute to the defense effort of the United States. And, in any event, an applicant's expertise or ability to contribute to the defense effort is not a measure of whether that applicant demonstrates the high degree of judgment, reliability, or trustworthiness that must be reposed in persons granted access to classified information. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at pp. 7-8. The security concerns raised by an applicant's history of financial difficulties are not increased or decreased by the applicant's expertise or ability to contribute to the defense effort.

### **Conclusion**

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