

DATE: June 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21386

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision, dated February 12, 2003, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

The Board has jurisdiction under executive Order 10865 and Department of Defense Directive 522.6 (Directive) dated January 2, 1992, as amended.

Applicant's appeal presents the following issue: Whether the Administrative Judge erred by concluding there are no mitigating conditions applicable to Applicant's financial situation. For the reasons that follow the Board affirms the Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), dated August 22, 2002. The SOR was based on Guideline J (Criminal Conduct) and Guideline F (Financial Considerations).

Applicant requested a hearing which was held on January 8, 2003. Subsequently the Administrative Judge issued a decision in which he made findings favorable to Applicant under Guideline J, but made findings adverse to Applicant under Guideline F. Applicant appealed the unfavorable findings.

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 Issue

Whether the Administrative Judge erred by concluding there are no mitigating conditions applicable to Applicant's financial situation. Applicant does not challenge the Administrative Judge's findings of fact but he does argue on appeal that the Judge erred by not applying any mitigating conditions to Applicant's financial situation. The Judge's unchallenged findings include: (1) the mother of Applicant's 18-month-old daughter unexpectedly left him with the child in 2001; (2) Applicant has more than \$12,000 of past due indebtedness; (3) Applicant paid \$185 on his past due debts in 2001; and (4) Applicant enrolled in a debt management program and intends to begin payments in March 2003.

Applicant contends that the Administrative Judge erred by failing to apply Financial Considerations Mitigating Conditions 1, ⁽¹⁾

3, ⁽²⁾ 4, ⁽³⁾

and 6. ⁽⁴⁾

The Board finds Applicant's contention unpersuasive.

Applicant's past due indebtedness continued virtually unchanged through the date of the hearing so there is record evidence supporting the conclusion that the disqualifying behavior was recent and thus the Administrative Judge did not err by not applying Financial Considerations Mitigating Condition 1.

Although the departure of the mother of Applicant's daughter was unexpected, given the record evidence in this case, the Administrative Judge was not required to view Applicant's overall financial circumstance as beyond his control. Thus, the Judge did not err by not applying Financial Considerations Mitigating Condition 3.

Although Applicant has entered a debt management program, he had not yet begun payments (as of the hearing), so there is no evidence mandating the conclusion that his financial situation is being resolved or is under control. Thus, the Judge was not required to apply Financial Considerations Mitigating Condition 4.

Similarly, until Applicant has a meaningful financial track record it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Therefore, the Judge did not err by not applying Financial Considerations Mitigating Condition 6.

Applicant has failed to demonstrate that the Judge erred.

Conclusion

Applicant has failed to meet his burden of demonstrating error on appeal. Therefore, the Administrative Judge's February 12, 2003 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

1. "The behavior was not recent."
2. "The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)."
3. "The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control."
4. "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."