

DATE: June 26, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-22566

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Applicant has appealed the March 24, 2003 decision of Administrative Judge Barry M. Sax, in which the Judge concluded that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Board has jurisdiction on appeal under Executive Order 10965 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 failing to take into account Applicant's testimony at the hearing or his written financial statement submitted within the time allowed by the Judge; (2) whether the Judge erred by failing to understand his testimony that two of his debts were duplicates; and (3) whether the Judge erred by failing to make telephone calls to Applicant's creditors when asked to do so by Applicant. For the reasons that follow, the Board affirms the Administrative Judge's decision.

#### **Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 11, 2002. The SOR was based on Guideline F (Financial Considerations).

Applicant requested a hearing which was held on December 2, 2002. The Administrative Judge issued a decision dated March 24, 2003, 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**

In his appeal brief, Applicant seeks to introduce the current status of the debts cited in the Administrative Judge's decision. To the extent that the status information has changed since the hearing, it constitutes new evidence. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Accordingly, the Board will address only those appeal arguments that do not rely on new evidence.

Applicant argues that the Administrative Judge failed to take into consideration either his testimony at the hearing or the written information he submitted within two weeks of the hearing (specifically a personal financial statement submitted after the hearing). [\(1\)](#)

He contends that the Judge did not understand that two debts listed on the SOR were for the same obligation. Applicant maintains that the Judge committed error when he did not call Applicant's creditors to verify Applicant's statements as to the status of Applicant's debts.

The weighing of evidence is within an Administrative Judge's discretion. There is a rebuttable presumption that the Administrative Judge considered all the record evidence unless the Judge specifically states otherwise. The mere fact that an Administrative Judge concludes that favorable evidence presented by an applicant is not sufficient to outweigh or overcome the unfavorable evidence does not demonstrate that the Judge disregarded or ignored the favorable evidence or improperly weighed the evidence. *See, e.g.*, ISCR Case No. 00-0587 (May 28, 2002) at p. 2. Applicant's arguments are insufficient to overcome that presumption. In any case, the Administrative Judge specifically cited to Applicant's post-hearing exhibits including the personal financial statement. Furthermore, to the extent Applicant did not present documentation to support his claims of satisfying various debts, the Judge could take into account the absence of such corroborating documentation. *See, e.g.*, ISCR Case No. 99-0012 (December 1, 1999) at p. 3. The Board concludes that the Applicant has failed to demonstrate that the Administrative Judge did not consider all the record evidence.

With regard to the debts which Applicant identifies as duplicates, it is clear that the Administrative Judge considered Applicant's financial record as a whole. The Judge noted that the two debts might be duplicates, but found adequate evidence for denying the clearance based on Applicant's overall history of financial difficulties. The Board concludes the Judge's findings and conclusions are sustainable in light of the record evidence in this case.

With regard to the Judge's refusal to phone Applicant's creditors, Applicant has the burden of persuasion to obtain a favorable clearance decision. Applicant is responsible for presenting witnesses and other evidence. *See* Directive, Additional Procedural Guidance, Item E3.1.15. The Judge is under no obligation to locate evidence for Applicant. A review of the procedural history of the case shows Applicant was on adequate notice of his obligation to prepare for the hearing and present evidence for the Judge's consideration.

### **Conclusion**

Applicant has failed to meet his burden of demonstrating error below. The Board affirms the Administrative Judge's adverse security decision for the reasons stated herein.

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: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

1. At the hearing, the Judge had agreed to accept documentation of the status of Applicant's debts if submitted by the close of business on December 16, 2002.