

DATE: February 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24504

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Claude R. Heiny issued a decision, dated October 22, 2002, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

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 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 a Statement of Reasons (SOR) to Applicant dated February 25, 2002. The SOR was based on Guideline F (Financial Considerations).

A hearing was held on June 5, 2002.

The Administrative Judge issued a written decision dated October 22, 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 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

The Administrative Judge entered formal findings in favor of Applicant with respect to SOR paragraphs 1.a, 1.f, 1.h, and 1.i. To the extent that Applicant's appeal brief could be construed as raising objections to the Judge's findings and conclusions concerning those SOR paragraphs, the Board need not discuss them. Applicant was not prejudiced by the Judge's favorable formal findings as to the SOR paragraphs 1.a, 1.f, 1.h, and 1.i, and no useful purpose would be served by addressing them in connection with Applicant's appeal.

Whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law.

On appeal, Applicant asserts: (1) her past credit history was not a problem during previous security clearance investigations and was not an impediment to earlier grants of clearances; (2) during the current security clearance investigation she underestimated the amount of time it would take to resolve her debts because she misunderstood the instructions of the Defense Security Service (DSS) investigator, who told her to make a time estimate that seemed "reasonable"; (3) statements in the Judge's decision that Applicant was a good citizen, hard-working, and trustworthy are inconsistent with the Judge's conclusion that she is not security worthy; (4) it is unfair to characterize her as a threat to national security when she is taking the hard, honest route to get out of debt; (5) other persons who are less trustworthy than she is have been granted security clearances; and (6) a denial of a security clearance will hinder her job and her ability to pay debts. The Board construes these arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

Prior security clearance adjudications and granting of clearances for Applicant have no bearing on the legal sufficiency of the Administrative Judge's adverse security clearance decision in this case. The government is not estopped from making an adverse clearance decision when there have been prior favorable adjudications. This is especially true when the most recent adjudication takes into account facts and circumstances that were not necessarily present or as significant at the time of an earlier investigation. *See, e.g.*, ISCR Case No. 97-0191 (April 28, 1998) at pp. 3-4 (a favorable security clearance decision does not give an applicant a right to retain a clearance regardless of subsequent events or changed circumstances). The record evidence indicates that Applicant was last granted a security clearance in 1998 or early 1999. While the majority of Applicant's delinquent debts precede the 1998 time frame, the fact that most of the debts remained unresolved in the ensuing years is a significant additional factor that was properly before the Administrative Judge. Applicant has failed to establish error.

Applicant states that when estimating a time period for the resolution of her debts during a DSS interview, the investigator told her to indicate a period reflecting a "reasonable" amount of time. Applicant claims on appeal that she interpreted the investigator's guidance as meaning a date by which she could contact creditors and make arrangements for payment, rather than a date by which she would have her debts paid off. Applicant's claim on appeal contradicts assertions she made in answer to the SOR and at the hearing, as such it is new evidence which the Board cannot consider on appeal. Moreover, Applicant was not prejudiced by any alleged misunderstanding since the Judge's adverse security clearance decision is not specifically predicated on any failure of Applicant to satisfy her outstanding debts within eighteen months. A review of the Administrative Judge's decision indicates that he was primarily concerned about the magnitude of Applicant's delinquent debts, their longstanding duration, and the fact that Applicant had failed to establish repayment plans for many of her debts by the date of the hearing.

Applicant's third and fourth arguments overlap and may be discussed together. Notwithstanding the fact that the Judge made general findings that Applicant was of good character, a good citizen, and was characterized as being very trustworthy, he ultimately concluded that she had been financially irresponsible and her debt problems had not been

mitigated. Such findings and conclusions are not inconsistent. When deciding Applicant's case, the Administrative Judge was required to consider the whole person and to evaluate both favorable and unfavorable evidence. In this case the Judge concluded that, while she had good characteristics in other areas, principally in the workplace, Applicant's inability to handle her finances warranted an unfavorable security clearance decision. Similarly, the Judge acknowledged Applicant's efforts to retire her delinquent debts but ultimately concluded that her efforts did not mitigate the government's security concerns. The Judge is responsible for weighing the evidence. Absent a showing by Applicant that he did so in a manner that was arbitrary, capricious, and contrary to law, the Board will not disturb the Judge's findings and conclusions on appeal. Applicant has failed to demonstrate error.

Applicant's fifth argument is based on assertions (regarding the results of other security clearance adjudications) that go beyond the record below. As such, the Board cannot consider these matters on appeal. Moreover, the Applicant has failed to demonstrate how the results of other security clearance adjudications establish that the Administrative Judge erred in this case.

Applicant describes the negative effects that losing her security clearance would have upon her. Even if an unfavorable security clearance decision were to have an adverse effect on Applicant's employment situation, such a result would not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. "An applicant is not made more or less suitable for a security clearance based on how a security clearance decision might affect the applicant." ISCR Case No. 00-0593 (May 14, 2001) at p. 4. The negative security significance of Applicant's history of bad debt is not reduced or diminished by the possibility that an unfavorable security clearance decision might have adverse consequences for her employment situation.

Conclusion

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