

DATE: June 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26675

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Joseph Testan issued a decision, dated March 17, 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.

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 in finding that Applicant had a history of failing to satisfy his financial obligations; and 2. Whether the Administrative Judge's factual finding that Applicant took a "pleasure trip" in 1997 is supported by substantial evidence. 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 May 7, 2002. The SOR was based on Guideline F (Financial Considerations).

Applicant responded to the SOR. A File of Relevant Material (FORM) was prepared, and a copy was provided to Applicant. A response to the FORM was received from Applicant, and the case was assigned to the Administrative Judge for determination. The Judge issued a written decision, dated March 17, 2003, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#)

The case is before the Board on Applicant's appeal from the Administrative Judge's adverse decision. [\(2\)](#)

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 in finding that Applicant has a history of failing to satisfy his financial obligations. Applicant argues that the Judge's finding that Applicant had a history of failing to satisfy his financial obligations is "not entirely accurate." Applicant contends that his credit rating before 1997 was excellent. Applicant argues that if he had a "history" of not

paying his bills, he would not have been able to become indebted to such an extent that more than \$123,000 was discharged in bankruptcy. Applicant's response to the SOR indicates that the debts in issue were all incurred between 1995 and 1997, and this was the only time in his life that he was unable to meet his financial obligations.

Here, the Administrative Judge noted the policy in the Financial Considerations guideline that security concerns may be raised when an applicant has a history of not meeting financial obligations (Disqualifying Condition 1) or is unable or unwilling to satisfy debts (Disqualifying Condition 3). *See* Directive, Enclosure 2, Items E2.A6.1.2.1 and E2.A6.1.2.3. Consistent with Applicant's own admission, the Judge found that Applicant lived off credit cards from approximately 1995 to 1998. Other evidence of record establishes that these debts were unsatisfied and were not addressed until Applicant's discharge in bankruptcy in October 2001. Given these facts, there is reasonable support for the Administrative Judge's conclusion that Applicant had a "history" of failing to satisfy his financial obligations. Applicant's filing for bankruptcy in 2001 did not preclude the Judge from considering the security significance of the actions that lead to the delinquent debts and Applicant's longstanding failure to address these debts once incurred. *See* ISCR Case No. 97-0016 (December 31, 1997) at p. 4.

2. Whether the Administrative Judge's factual finding that Applicant took a "pleasure trip" in 1997 is supported by substantial evidence. Applicant contends that the Administrative Judge erred in finding that unanswered questions remain in how Applicant financed a one-month "pleasure" trip overseas in 1997, in a period when, admittedly, he was living off of credit cards. On appeal, Applicant proffers that he had to categorize the trip as "pleasure" because it was for personal purposes and in this case there was a family emergency with most of the expenses handled by relatives. We interpret Applicant's appeal as raising the issue of whether the Judge substituted speculation for reasonable inference. In effect, Applicant contends that it was unreasonable for the Judge to conclude that such a trip was financially irresponsible just because Applicant was on a month-long personal trip during a period of financial difficulty.

In presenting this issue on appeal, Applicant makes assertions about his trip overseas in 1997 that go beyond record evidence. As noted earlier in this decision, the Appeal Board cannot consider new evidence on appeal. Consequently, in evaluating the Administrative Judge's conclusions on this point, the Board will confine its consideration to the record. The record evidence contains the following: (1) a description on a security clearance questionnaire of a month long overseas trip in 1997 that is characterized as "pleasure," and (2) a brief description of the same trip in a written statement to an investigating agent, where Applicant indicated that he and his wife traveled overseas to visit her 90-year-old grandfather, without elaboration. Given this evidence, the Board need not agree with the Judge to conclude that the Judge could infer that Applicant had taken a "pleasure" trip in the midst of his financial difficulties. Applicant has failed to demonstrate error on the part of the Administrative Judge.

Conclusion

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

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

1. The Judge found in Applicant's favor with regard to the debt in subparagraph 1.j of the SOR (which is not in issue), but against Applicant on all other subparagraphs in the SOR.
2. Applicant also introduces additional explanations that exceed that contained in the record. Such new evidence cannot be considered on appeal. *See Directive, Additional Procedural Guidance, Item E3.1.29.*