

DATE: July 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26689

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey Anderson issued a decision, dated April 11, 2003, in which she 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 issue: whether the Administrative Judge's adverse conclusions are 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 December 13, 2002. The SOR was based on Guideline F (Financial Considerations). In his response to the SOR, Applicant specifically admitted to each of several subparagraphs in the SOR (each listing a particular overdue debt), and he also stated that "I wish to have a decision without a Hearing." Department Counsel forwarded the government's File of Relevant arial (FORM) to Applicant on February 7, 2003. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 11, 2003, but he submitted no reply. In reaching her decision, the Judge found against Applicant on Guideline F and each subparagraph noting that Applicant's history of not meeting financial obligations and inability or unwillingness to satisfy debts raise security concerns.

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

On appeal, Applicant does not challenge the Judge's findings and conclusions with respect to his history of not meeting his financial obligations, or his inability or unwillingness to satisfy the overdue debts. But, he contends that the decision considered only his financial records. Thereafter, much of his appeal brief is a proffer of new evidence. Applicant discusses efforts to restore his credit, his loyalty, his work history, his honorable service with the Air Force, and the fact that he formerly held a secret clearance. He mentions that his continued employment is predicated on being granted a secret security clearance, and that he is supporting his son. He also attaches a letter of recommendation from his manager and suggests that he now wants a "meeting" with the Board.

The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29. Moreover, Applicant had the opportunity to respond to the FORM and submit additional information for the Judge to consider. He did not take advantage of that opportunity. By failing to respond to the FORM, Applicant waived his right to submit additional information for the Judge to consider in his case. Applicant cannot fairly claim the Judge erred based on his submission on appeal of information that he did not make available for the Judge's consideration in the proceedings below. *See* ISCR Case No. 01-25608 (June 9, 2003) at pp. 2-3. Furthermore, it is irrelevant that a negative security decision may result in financial hardship for Applicant because the effect of an adverse decision does not change an applicant's suitability for a security clearance. *See* ISCR Case No. 01-24318 (May 23, 2003) at p.3.

Applicant has not raised any claims of factual or legal error by the Administrative Judge. There is no presumption of error below, and the appealing party has the burden of raising claims of error with specificity and demonstrating factual or legal error that warrants remand or reversal. Because Applicant raised no claims of such error, the Board need not address the Judge's findings and conclusions. *See* ISCR Case No. 02-18372 (May 6, 2003) at p. 3.

Conclusion

Applicant has failed to demonstrate error below. Accordingly, 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: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board