

DATE: May 6, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18372

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Applicant has appealed the February 13, 2003 decision of Administrative Judge Joseph Testan, in which the Judge concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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 Applicant can be allowed to present new evidence to the Board and to discuss such evidence with the Board. 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 August 8, 2002. The SOR was based on Guideline F (Financial Considerations). Applicant submitted an answer to the SOR. A hearing was held on November 19, 2002.

The Administrative Judge issued a written decision, dated February 13, 2003. The Judge made findings and reached conclusions about Applicant's history of financial difficulties, entered formal findings against Applicant with respect to Guideline F, and 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**

On appeal, Applicant does not challenge any of the Administrative Judge's findings or conclusions. Rather, Applicant states "I have many extenuating circumstances and other developments since the hearing process and I would welcome the opportunity to discuss them with the appeal board." The Board construes this statement as raising the issue of whether Applicant can be allowed to present new evidence and to discuss such evidence with the Board.

The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, Applicant is not entitled to have the record in his case kept open to allow him additional opportunities to present evidence on his behalf. *See, e.g.*, ISCR Case No. 00-0250 (February 13, 2001) at pp. 3-4 (Board citing Supreme Court decision on the need for administrative finality to support a conclusion that a party is not entitled to have the case reopened to allow the introduction of evidence that comes into existence after the close of the record). *Cf.* ISCR Case No. 00-0429 (July 9, 2001) at p. 3 ("Absent a showing of factual or legal error that affects a party's right to present evidence in the proceedings below, a party does not have the right to have a second chance at presenting its case before an Administrative Judge."). Accordingly, the Board cannot accept Applicant's offer to present new evidence for its consideration in his case.

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 has raised no claims of error below, the Board need not address the Judge's findings and conclusions.

### **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: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge  
Member, Appeal Board