

DATE: December 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26217

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), dated November 23, 2004, which stated the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. The SOR was based on Guideline F (Financial Considerations). Administrative Judge James A. Young issued an unfavorable security clearance decision, dated September 30, 2005.

Applicant appealed the Administrative Judge's unfavorable decision. The Board has jurisdiction under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

The following issue has been raised on appeal: whether the Administrative Judge erred by finding that Applicant has no concrete plan to satisfy her delinquent debts. For the reasons that follow, the Board affirms the Administrative Judge's 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. 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 the rulings or conclusions of an Administrative Judge are challenged, the Board must consider whether they are: (1) arbitrary or capricious; or (2) contrary to law. Directive, Additional Procedural Guidance, Item E3.1.32.3. In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 97-0435 (July 14, 1998) at p. 3 (citing Supreme Court decision). In deciding whether the Judge's rulings or conclusions are contrary to law, the Board will consider whether they are

contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. Compliance with state or local law is not required because security clearance adjudications are conducted by the Department of Defense pursuant to federal law. *See* U.S. Constitution, Article VI, clause 2 (Supremacy Clause). *See, e.g.*, ISCR Case No. 00-0423 (June 8, 2001) at p. 3 (citing Supreme Court decisions).

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, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole. Although a Judge's credibility determination is not immune from review, the party challenging a Judge's credibility determination has a heavy burden on appeal.

When an appeal issue 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).

If an appealing party demonstrates factual or legal error, then the Board must consider the following questions:

Is the error harmful or harmless? *See, e.g.*, ISCR Case No. 00-0250 (July 11, 2001) at p. 6 (discussing harmless error doctrine);

Has the nonappealing party made a persuasive argument for how the Administrative Judge's decision can be affirmed on alternate grounds? *See, e.g.*, ISCR Case No. 99-0454 (October 17, 2000) at p. 6 (citing federal cases); and

If the Administrative Judge's decision cannot be affirmed, should the case be reversed or remanded? (Directive, Additional Procedural Guidance, Items E3.1.33.2 and E3.1.33.3).

Appeal Issue⁽¹⁾

Whether the Administrative Judge erred by finding that Applicant has no concrete plan to satisfy her delinquent debts. The Administrative Judge found that Applicant had a history of financial difficulties, with delinquent debts of more than \$19,000 still owed.⁽²⁾ The Judge also found that Applicant did not have a concrete plan to resolve those delinquent debts. The Judge concluded that Applicant's history of financial difficulties raised security concerns under Guideline F (Financial Considerations), and that Applicant had failed to extenuate or mitigate those security concerns.

On appeal, Applicant does not challenge the Administrative Judge's findings of fact about her delinquent debts. However, Applicant does challenge the Judge's finding that she does not have a concrete plan to resolve her delinquent debts. Applicant's claim of error is not persuasive.

The record evidence shows that Applicant stated her intention to address and resolve her delinquent debts. Applicant's statements about her intention to address and resolve her delinquent debts were relevant and material evidence that the Administrative Judge had to consider. However, the Judge was not required, as a matter of law, to consider Applicant's statements in isolation from other record evidence about her history of financial difficulties. Moreover, the Judge could consider whether there was record evidence that shed light on whether Applicant was likely to be able to follow through on her stated intentions to address and resolve her delinquent debts. Considering the record as a whole, the Board concludes the Judge had a sufficient basis in the record evidence to find that Applicant's stated intentions were not sufficient to constitute a concrete plan to address and resolve her delinquent debts.

Conclusion

The Board affirms the Administrative Judge's decision because Applicant has not demonstrated error below.

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

1. Applicant's appeal brief refers to her duties as a data clerk for a defense contractor. However, Applicant's description of her duties as a data clerk fails to raise any identifiable claim of error that the Board can discern.
2. The Administrative Judge found in Applicant's favor with respect to the debts covered by SOR paragraphs 1.b, 1.d, 1.f, 1.h, 1.i, and 1.m. Those favorable findings are not at issue on appeal.