DATE: February 23, 2006

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-00270

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) declined to grant Applicant a security clearance due to security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested the case be decided on the written record. On October 20, 2005, after considering the record, Administrative Judge Arthur E. Marshall, Jr. denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant requests the Board consider evidence not submitted for the Administrative Judge's consideration during the proceedings below. Applicant asks the Board to reverse the Judge's unfavorable decision after consideration of the additional evidence that he offers on appeal.

The Appeal Board's authority to review a case is limited to cases in which the appealing party has alleged the Administrative Judge committed harmful error. Applicant has not made an allegation of harmful error. Therefore, the decision of the Administrative Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Concurring Opinion of Chairman Emilio Jaksetic:

I concur with my colleagues' decision to affirm the Administrative Judge's decision.

Applicant does not raise any identifiable claim of factual or legal error. Rather, Applicant makes factual assertions on appeal that constitute a proffer of new evidence, and asks the Board to reach a favorable security clearance decision after considering the new evidence offered by Applicant. There is no presumption of error below, and an appealing party must raise claims of error with specificity. Furthermore, the Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item E3.1.29. Accordingly, Applicant seeks relief to which he is not entitled under the Directive.

A review of the case record shows that Applicant was provided a copy of the File of Relevant Material (FORM), and was given an opportunity to respond to the FORM and submit additional information for the Administrative Judge to consider in his case. Applicant submitted a response to the FORM, including additional information for the Judge to consider in his case. There is a rebuttable presumption that a Judge considered all the record evidence unless the Judge specifically states otherwise. *See Western Pacific Fisheries, Inc. v. SS President Grant*, 730 F.2d 1280, 1285 (9th Cir. 1984). Apart from that presumption, a reading of the decision below shows that the Judge was aware of, and took into account, Applicant's response to the FORM.

Applicant cannot fairly challenge the Administrative Judge's decision based on a proffer of additional evidence on appeal. Moreover, Applicant is not entitled to have the record reopened to allow him the opportunity to present additional evidence for consideration in his case. There must be some reasonable degree of administrative finality, and such finality would become extremely difficult -- if not impossible -- to achieve if an appealing party could insist on the record being reopened to allow the appealing party an opportunity to present new evidence on appeal. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-555 (1978)(discussing the need for finality in administrative proceedings, and explaining why a party cannot expect it has a right to reopen the record).

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board