

DATE: October 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15214

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 April 5, 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 Carol G. Ricciardello issued an unfavorable security clearance decision, dated July 28, 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 issues have been raised on appeal: (1) whether the Administrative Judge failed to take into account evidence favorable to Applicant; (2) whether the Administrative Judge erred by finding that Applicant owed the debt alleged under SOR paragraph 1.b; and (3) whether Applicant's case should be remanded to allow him an opportunity to present additional evidence about his financial situation. 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 Issues

1. Whether the Administrative Judge failed to take into account evidence favorable to Applicant. Applicant contends the Administrative Judge failed to take into account evidence that he has paid many of his debts, and that the Judge's failure to do so "leads to an appearance of total neglect of my financial obligations" that is not accurate.

There is a rebuttable presumption that an Administrative Judge considered all the record evidence unless the Judge specifically states otherwise.⁽¹⁾ That presumption is not rebutted or overcome merely because a party can point to record evidence that was not specifically mentioned or discussed in the Judge's decision.⁽²⁾ There is no legal requirement that a Judge cite and discuss every piece of record evidence. Furthermore, the presumption that the Judge considered all the record evidence is not rebutted by the fact that Applicant can point to record evidence that he believes should have been given greater weight by the Judge.⁽³⁾ Finally, reading the Judge's decision in its entirety, the Board concludes it does not state or imply Applicant had totally neglected his debts. To the contrary, the Judge's decision notes that some--not all--of Applicant's debts became delinquent.

For these reasons, the Board concludes Applicant has not rebutted or overcome the presumption that the Administrative Judge considered all the record evidence.

2. Whether the Administrative Judge erred by finding that Applicant owed the debt alleged under SOR paragraph 1.b. Applicant also asserts: (a) the Administrative Judge erred by finding that he owes the debt alleged under SOR paragraph 1.b, claiming that debt is the same debt as the one covered by SOR paragraph 1.a; and (b) the Judge's error concerning SOR paragraph 1.b is significant because "[t]his duplication accounts for more than half of the alleged delinquency amount therefore setting a false standard for me to be judged by."

There is conflicting record evidence on whether the debt alleged under SOR paragraph 1.b is the same debt as the debt covered by SOR paragraph 1.a. Indeed, the Administrative Judge explicitly recognized Applicant's claim that the debt alleged under SOR paragraph 1.b was the same as the debt covered by SOR paragraph 1.a. Faced with the presence of conflicting evidence, the Judge had to consider the record evidence as a whole and make a finding of fact about the debt alleged under SOR paragraph 1.b.⁽⁴⁾ The Board does not have to decide whether it agrees with the Judge's finding about the disputed debt to conclude the Judge's finding reflects a legally permissible interpretation of the record evidence in this case.

The Administrative Judge's findings and conclusions about Applicant's history of financial difficulties provide a rational basis for her adverse conclusions about his security eligibility.⁽⁵⁾

3. Whether Applicant's case should be remanded to allow him an opportunity to present additional evidence about his financial situation. Applicant asks the Board to remand the case to allow him an opportunity to present additional evidence about his financial situation, if the Board concludes that he has not demonstrated error that warrants reversal of the Administrative Judge's decision. Applicant is not entitled to such relief.

In answering the SOR, Applicant stated that he did not want a hearing, but rather wanted his case to be decided without a hearing. Applicant received a copy of the File of Relevant Material (FORM) and was given the opportunity to respond to the FORM and to submit additional evidence for an Administrative Judge to consider in his case. Applicant submitted a response to the FORM, which included additional evidence for consideration in his case. Considering all the circumstances, the Board concludes Applicant waived his right to a hearing, and Applicant received a reasonable opportunity to respond to the FORM and to present additional evidence for consideration in his case. Applicant is not entitled to a remand just so he can have another chance to present his case.⁽⁶⁾

Conclusion

The Board affirms the Administrative Judge's decision because Applicant has not demonstrated error below, and because Applicant seeks relief to which he is not entitled.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at p. 2.

2. *See, e.g.*, ISCR Case No. 02-27081 (November 10, 2004) at p. 5; ISCR Case No. 02-33256 (October 21, 2004) at p. 4.
3. *See, e.g.*, ISCR Case No. 03-05647 (December 30, 2004) at p. 4; ISCR Case No. 03-09915 (December 16, 2004) at p. 3.
4. *See, e.g.*, ISCR Case 00-0423 (June 8, 2001) at pp. 2-3 ("The presence of conflicting record evidence does not diminish a Judge's fact-finding responsibility. When the record contains conflicting evidence, the Judge must carefully weigh the evidence in a reasonable, common sense manner and make findings that reflect a reasonable interpretation of the evidence that takes into account all the record evidence.").
5. *See, e.g.*, ISCR Case No. 03-13281 (October 22, 2004) at p. 4 (discussing security significance of history of financial difficulties).
6. *See, e.g.*, ISCR Case No. 02-30603 (February 25, 2004) at p. 3; ISCR Case No. 02-20403 (April 7, 2003) at p. 4.