DATE: January 17, 2007

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In re:

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SSN: ------

Applicant for Security Clearance

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ISCR Case No. 04-07703

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

***Pro Se***

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 5, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision-security concerns under Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On June 19, 2006, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

The Judge made extensive findings of fact which are a matter of record and need not be repeated in detail here. They will be cited as necessary in addressing material issues raised by Applicant on appeal. The Judge found against Applicant on all eight allegations raising security concerns under Guideline E. Six of these allegations involved falsification or deliberate omission of relevant and material facts from her security clearance application and the other two involved adverse information concerning problems with former employers. Her appeal starts by asserting insufficiency of proof concerning the latter two issues.

Applicant first asserts that the Judge erred in finding against her under SOR ¶ 1.h,[(1)] because there was insufficient evidence to prove she was the person who made the unauthorized calls from her employer's phone. The Judge chose to base her findings on the contemporaneous substantiating documentation supplied by this previous employer over Applicant's inconsistent denials and stated inability to remember making the calls. She next asserts that the proof of her being terminated, as alleged in SOR ¶ 1.a,[(2)] was false. In support of this position she merely restates her version of the reasons she was fired, a version noted and rejected in the decision below. The Judge again chose to base her findings on the contemporaneous substantiating documentation from the former employer rather than accept Applicant's otherwise uncorroborated version of events.[(3)]

The Appeal Board's review of the Judge's findings of fact is limited to determining if they are supported by substantial evidence - "such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*,

383 U.S. 607, 620-21 (1966). In evaluating a Judge's findings, we are required to give deference to the Judge's credibility determinations. Directive ¶ E3.1.32.1.

The Board finds each of the Judge's challenged findings to be supported by substantial evidence in the form of Exhibits 3 and 4, comprising contemporaneous documentation from the previous employers setting forth facts consistent with her findings. Her evaluation of the credibility of Applicant's uncorroborated testimony to the contrary is sustainable. These assertions of error are without merit.

Applicant next recites several undisputed facts from the record concerning her African-born husband and in-laws, but mischaracterizes their relevance to the allegations against her. She correctly asserts that she never claimed her in-laws were U.S. citizens. However, as alleged in SOR ¶¶ 1.c and 1.d, the issue was that she didn't mention these family members at all, as she was required to do in response to questions 9 and 10 of the application. Furthermore, she listed her husband as a U.S. citizen when, as found by the Judge based on substantial evidence, she believed him to be a permanent resident alien and made no effort to obtain or provide documentation verifying his status.

Applicant further admits to providing false answers concerning her education (SOR ¶ 1.b) and her delinquent debts (SOR ¶¶ 1.f and 1.g). She attempts to justify the former by saying, again without any substantiating documentation, that she was close to finishing some kind of a degree. She attempts to justify the latter by saying she had consolidated and made payments on some of her then-substantial indebtedness. The Judge, however, correctly found that the two delinquent debts that were alleged in the SOR to have been falsely denied were not listed in her debt consolidation plan. Applicant's repetition, on appeal, of the justifications that the Judge rejected in her decision below does not establish that the Judge erred.

Applicant next states, "My application had two dates on it, I don't know if things been change [sic] or what." The two dates were addressed at the hearing without objection by Applicant. It was resolved that she must have signed and dated the certification of the truth and completeness of the application on the last page well before the date on the first page indicating when the final version was electronically submitted. No issue of changed contents was raised below. If Applicant's above-quoted statement is meant to assert some content change for which she should not be held responsible, the Board cannot consider this new evidence on appeal . Other than that interpretation, the statement does not allege harmful error.

Finally, Applicant recites her good recent work performance and how important her job is to her. These matters were considered by the Judge in her findings and conclusions under the "whole person" concept. We review a Judge's conclusions to determine if they are arbitrary, capricious or contrary to law.[(4)] The Judge's Findings of Fact were 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. The Judge's conclusions were not arbitrary, capricious or contrary to law. Applicant failed to demonstrate any harmful error.

## Order

The decision of the Administrative Judge denying and revoking Applicant's clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

Signed: David M. White

David M. White

Administrative Judge

Member, Appeal Board

1. SOR ¶ 1.h. reads: "From January 1999 to February 1999, while employed at [Employer A], you made several phone calls to a Psychic Hotline from a work telephone, incurring approximately $746.65 in charges. You have not repaid this debt."

2. SOR ¶1.a. reads: "On or about [xx] March 2000, your employment with [Employer C] was terminated due to your failure to communicate effectively and due to your failure to meet an acceptable level of performance."

3. Regardless of why she was actually fired, Applicant never justified her failure to list this required information in response to question 20 on the security application, as alleged in SOR ¶ 1.e.

4. An Administrative Judge is required to "examine the relevant data and articulate a satisfactory explanation for" the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Appeal Board may reverse or remand the Judge's decision to grant, deny or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Our scope of review under this standard is narrow and we may not substitute our judgment for that of the Judge. We may not set aside a Judge's decision "that is rational, based on consideration of the relevant factors, and within the scope of the authority delegated to the agency..." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 42.