

DATE: February 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04332

APPEAL BOARD SUMMARY DISPOSITION

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 F (Financial Considerations) and Guideline E (Personal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On January 17, 2006, after considering the record, Administrative Judge Leroy F. Foreman denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant states that he made an erroneous statement about the status of certain debts in his response to the Statement of Reasons, and requests the Board consider evidence about his financial situation 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. Moreover, the Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. Therefore, the decision of the Administrative Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Concurring Opinion of Chairman Emilio Jaksetic:

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

Applicant does not raise any identifiable claim of factual or legal error by the Administrative Judge. Instead, 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.

Applicant's claim that he made an erroneous statement about certain debts in his response to the Statement of Reasons (SOR) does not demonstrate error by the Administrative Judge.

Applicant cannot fairly challenge the Administrative Judge's decision based on a proffer of additional evidence on appeal. 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, which included additional information about his financial situation for the Judge to consider in his case. Applicant is not entitled to have the record reopened to allow him the opportunity to present additional evidence for consideration in his case. *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).

Finally, the decision below was based, in part, on the Administrative Judge's findings that Applicant falsified a security clearance application that he completed in July 2004. Those findings of falsification, which are not challenged on appeal, provide a sufficient basis -- independent of the Judge's findings and conclusions under Guideline F -- for the Judge's unfavorable conclusions about Applicant's security eligibility. *See, e.g.*, ISCR Case No. 02-12329 (App. Bd. Dec. 18, 2003) at 4 (discussing security significance of falsification).

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board