

DATE: April 3, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0281

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

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

#### FOR APPLICANT

*Pro Se*

Administrative Judge John G. Metz, Jr. issued a decision, dated January 2, 1998, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

#### **Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated April 15, 1997 to Applicant. The SOR was based on Criterion F (Financial Considerations).

Applicant submitted an answer to the SOR and requested that a decision be made in his case without a hearing. A File of Relevant Material (FORM) was prepared and a copy provided to Applicant. Applicant submitted additional information in response to the FORM.

The case was then assigned to the Administrative Judge for determination. The Judge subsequently issued a written decision, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Applicant's appeal from the Judge's adverse decision.

#### **Appeal Issue<sup>(1)</sup>**

The Administrative Judge made findings about Applicant's history of financial difficulties, which were precipitated by Applicant's failed business attempt in mid-1994 and aggravated by his period of unemployment from November 1994 to September 1995. The Judge considered the facts and circumstances leading up to Applicant's financial difficulties and evaluated the evidence Applicant presented concerning his efforts at financial rehabilitation. The Judge concluded Applicant had not acted reasonably in handling his financial difficulties because he had failed to make meaningful

efforts to deal with them until late 1997, nearly six months after he had received the SOR and two years after becoming reemployed. The Judge further concluded Applicant's efforts at financial rehabilitation were too recent and incomplete to conclude that those efforts would be successful. (2)

Applicant does not challenge the Administrative Judge's findings about his history of financial difficulties. However, Applicant argues: (a) his financial difficulties arose out of circumstances that were largely out of his control; (b) he and his wife have done the best they could under difficult financial conditions; (c) he has been working to pay off his creditors; (d) he cannot pay all his creditors at once without declaring bankruptcy; (e) he would never jeopardize the national security because of his financial problems; and (f) he would like to be given a second chance to allow him to satisfy his outstanding debts. The Board construes Applicant's arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

The Administrative Judge specifically noted the facts and circumstances under which Applicant's financial difficulties arose and applied Financial Considerations Mitigating Guideline 3 ["the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business turndown . . .)"]. Accordingly, the Judge took into consideration the evidence presented by Applicant concerning the circumstances under which his financial problems arose during 1994. The Judge's adverse conclusions about Applicant's financial difficulties were based not on the fact that Applicant got into financial trouble, but rather the fact that Applicant did not deal with his financial problems once he regained employment in late 1995 and took no meaningful action to address his financial problems until late 1997. The Judge's analysis of Applicant's overall history of financial difficulties reflects a reasonable interpretation of the record evidence and demonstrates an appropriate consideration of the relevant factors under Section F.3. and the Adjudicative Guidelines. Error is not demonstrated merely because the Judge did not find the mitigating evidence presented by Applicant to be sufficient to overcome the negative aspects of Applicant's history of financial problems. *See, e.g.*, ISCR Case No. 97-0016 (December 31, 1997) at p. 4.

Moreover, the government need not wait until an applicant actually commits a security violation before it can deny or revoke that applicant's access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). All that is required is proof of facts and circumstances that indicate a particular applicant is at risk for mishandling classified information, or that the applicant does not demonstrate the high degree of judgment, reliability or trustworthiness required of persons granted access to classified information. *See, e.g.*, ISCR Case No. 96-0608 (August 28, 1997) at p. 6. We need not agree with every sentence of the Administrative Judge's decision to conclude Applicant's overall history of financial difficulties provides a rational basis for the Judge's adverse security clearance decision. *See, e.g.*, ISCR Case No. 97-0452 (March 23, 1998) at p. 3 (discussing security significance of a history of excessive indebtedness or recurring financial difficulties).

## Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's January 2, 1998 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

1. The Administrative Judge entered formal findings favorable to Applicant with respect to SOR subparagraphs 1.i., 1.p., and 1.q. Those favorable formal findings are not at issue on appeal.
2. The Administrative Judge's decision contains a number of harmless errors (including a sentence fragment and an erroneous date). However, the Board does not measure a Judge's decision against a standard of perfection.