

DATE: March 23, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0452

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 November 25, 1997, 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 July 10, 1997 to Applicant. The SOR was based on Criterion F (Financial Considerations).

Applicant submitted an answer to the SOR, in which he indicated he did not want to have a hearing. A File of Relevant Material (FORM) was prepared and a copy was provided to Applicant. After Applicant's response to the FORM was received, the case was assigned to an Administrative Judge for consideration.

The Administrative Judge issued a written decision, dated November 25, 1997, 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 that adverse decision.

Appeal Issue

The Administrative Judge made findings of fact about Applicant's history of financial difficulties, which included: delinquent debts; writing bad checks; stealing a military roommate's ATM card to make unauthorized withdrawals to pay for Applicant's bills; and taking out loans and then letting payments on them become delinquent. The Judge considered the record evidence, including the circumstances under which Applicant's financial problems arose,

Applicant's actions in responding to those problems, and Applicant's claim of making efforts to deal with his financial problems. The Judge then concluded that Applicant had failed to overcome the negative security implications of his documented history of financial difficulties.

On appeal, Applicant does not challenge the Administrative Judge's findings about his history of financial difficulties. Rather, Applicant argues: (1) he has always been honest and candid with the government about his financial problems; (2) he deeply regrets his past mistakes and has learned a hard lesson from them; (3) he has been working with his creditors to reduce his delinquent debts; (4) he is loyal to the United States and is not a threat to national security; and (5) he would like the Board to reverse the Administrative Judge's adverse decision so that he can continue to rebuild his life and financial situation. The Board construes these arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

Security clearance decisions are not an exact science, but rather involve predictive judgments about a person's security eligibility based on consideration of that person's conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). In addition, security clearance decisions are not limited to consideration of an applicant's conduct during duty hours. Any off-duty conduct that has security significance can be considered in deciding an applicant's security suitability. *See, e.g.*, ISCR Case No. 96-0871 (January 29, 1998) at p. 3. Furthermore, the government need not wait until a person mishandles or fails to properly safeguard classified information before it can deny or revoke 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 an applicant is at risk for mishandling classified information, or does not demonstrate the high degree of judgment, reliability and trustworthiness required of persons granted access to classified information.

Under Criterion F, the security eligibility of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties. Because financial difficulties, financial irresponsibility and greed have been significant motivating factors for espionage, the federal government must consider whether applicants --- through financial irresponsibility, greed, or financial misfortune --- may be more susceptible to mishandling or compromising classified information or material for financial gain. *See, e.g.*, ISCR Case No. 96-0544 (May 12, 1997) at pp. 5-6. In this case, the Administrative Judge concluded Applicant was in such a position of increased vulnerability and there were not extenuating or mitigating circumstances that negated or overcame the negative security implications of Applicant's overall history of financial difficulties. Considering the record as a whole, the Judge's reasoning and conclusions are not arbitrary, capricious, or contrary to law.

Applicant's argument about loyalty warrants further discussion. Industrial security clearance decisions are not loyalty determinations. *See* Executive Order 10865, Section 7. Nothing in the Administrative Judge's decision indicates or suggests the Judge was basing his decision on any finding about Applicant's loyalty.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's November 25, 1997 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

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board