

DATE: June 18, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0659

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Joseph Testan issued a decision, dated March 27, 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.

The 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 October 2, 1997 to Applicant. The SOR was based on Criterion F (Financial Considerations).

Applicant submitted an answer to the SOR in which he requested a hearing. Applicant's hearing was held on February 19, 1998. The Administrative 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 appeal from that unfavorable decision.

Appeal Issue

Applicant does not challenge any of the specific findings or conclusions made by the Administrative Judge. Still Applicant argues that he has learned a lot since 1995 (when his financial situation was aggravated by an automobile accident and job loss) and he requests reconsideration of the adverse clearance decision. The Board construes Applicant's appeal as arguing that the Administrative Judge's opinion was arbitrary, capricious, and contrary to law.

The Administrative Judge concluded that Applicant's financial situation was partly mitigated by the fact that the underlying indebtedness had been caused by factors beyond Applicant's control (the auto accident and the subsequent

job loss). The Administrative Judge also concluded that Applicant's failure to take any meaningful action on any of thirteen debts since the 1995 incidents was disqualifying and not mitigated. Therefore the Administrative decided that it was not clearly consistent with the national interest to give Applicant a security clearance.

The Administrative Judge's findings and conclusions are supported by substantial record evidence and are reasonable in light of all the evidence in the record. Applicant has not demonstrated that harmful error occurred below. The Board does not have authority under the Directive to reconsider Applicant's case anew except to correct harmful error. The Board need not agree with the Administrative Judge to find his decision sustainable. The Judge's findings and conclusions about Applicant's history of financial problems provide a rational basis for his adverse decision.

Applicant raises on appeal the possibility that he is now pursuing bankruptcy. This must be construed as new evidence since he testified at the hearing that he was following legal advice by not filing for bankruptcy (TR. p. 24). The Board is not permitted to consider new evidence on appeal. Directive, Additional Procedural Guidance, Item 29. Accordingly, the Board must disregard Applicant's current assertions about bankruptcy.

Conclusions

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's March 27, 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

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board