

DATE: October 21, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0730

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

Administrative Judge Darlene Lokey-Anderson issued a decision, dated June 30, 1998, in which she 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 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 27, 1997 to Applicant. The SOR was based on Criterion F (Financial Considerations), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct).

At the time that he provided an answer to the SOR, Applicant elected to have his case determined on a written record instead of a hearing. The Government submitted a File of Relevant Material (FORM) to the Applicant on March 13, 1998. Applicant submitted a reply to the FORM on April 28, 1998. The Administrative Judge subsequently issued a written decision, dated June 30, 1998. The Judge found that Applicant had a history of financial irresponsibility. She also found he had provided intentional falsifications of his financial history to the Government during a background investigation. The Judge concluded that Applicant's history and actions warranted formal findings against Applicant under Criteria E, F, and J. The Judge finally 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 Administrative Judge's adverse clearance decision.

Appeal Issue

Whether the Administrative Judge's unfavorable decision is arbitrary, capricious or contrary to law. On appeal, Applicant asserts: (a) he has been accused of owing debts which were either paid or were never his debts; (b) the Administrative Judge never discussed the fact that Applicant's ex-wife was responsible for the running up of his debts and his inability to pay them; (c) the Administrative Judge did not mention the fact that Applicant earned only \$1200.00 his first year out of the service and was thus unable to resolve his debts; (d) he never intentionally misled anyone about his 1991 bankruptcy petition; (e) he is an honest and hard worker; and (f) his 1981 bankruptcy should not now be held against him. The Board construes these arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious or contrary to law.

There is ample evidence in the case record to support the Judge's findings in those instances where she found that Applicant owed certain debts. It should be noted that the Judge found in Applicant's favor in two subparagraphs (1.c. and 1.l) under Criterion F where there was either evidence of repayment or insufficient evidence that Applicant still owed the debts listed in the SOR. Thus, any inaccurate assertions of debt contained in the SOR were cured by the Judge's scrutiny of the record evidence.

Applicant's contention that the Judge never considered the role that his ex-wife played in his debt problems does not establish error. Although the Judge never specifically discusses Applicant's assertion that his ex-wife was largely to blame for his debts, she did find that most of Applicant's debts were incurred before 1991 during an earlier marriage (Decision at p. 3). The Judge also acknowledged in the "Conclusions" portion of her decision that Applicant disputes some of his debts, yet never took steps to resolve the disputed debts. (Decision at p. 7). The Judge's adverse holding against Applicant under Criterion F is correctly based upon his failure to pay any undisputed debts **and** his failure to resolve any debts that he does not consider his. The Judge's decision makes clear that she considered Applicant's assertion that his debt problems were, at least in part, not of his own making. Her conclusion that this assertion was insufficient to mitigate the case against Applicant was reasonable.

Applicant complains on appeal that the Judge did not mention the facts that he only earned \$1200.00 during the year following his discharge from the service and that this paucity of income affected his ability to manage his debts. It is true that there is no mention of these specific facts in the Judge's decision. Nevertheless, there is a rebuttable presumption that the Judge considered all the evidence in the case unless there is clear indication to the contrary. *See, e.g.*, ISCR Case No. 97-0783 (August 7, 1998) at p. 4. Furthermore, there is no requirement that a Judge mention each and every item of evidence contained in the record when deciding a case. *See, e.g.*, DOHA Case No. 90-1596 (September 18, 1992) at p. 5. A reading of the Judge's decision in this case reveals that she was aware, at the time of the close of the record in this case, that Applicant's current income was insufficient for him to meaningfully resolve his outstanding debts. The fact that she did not conclude that Applicant's limited income was a factor in mitigation and extenuation was not error because of the record evidence that Applicant did not intend to pay his delinquent debts.

On appeal, Applicant proffers that he never intentionally tried to mislead anyone about his 1991 bankruptcy petition. However, there is sufficient evidence in the record to support the Judge's findings that Applicant intentionally failed to reveal the true extent of his financial difficulties on Government security questionnaires. When filling out two questionnaires four years apart Applicant omitted not only the fact of his bankruptcy filing but also his many debt delinquencies. The decision indicates that the Judge carefully considered the documentary evidence as well as Applicant's explanation for the various omissions from the questionnaires. After consideration, the Judge concluded that Applicant's explanations were not credible. (Decision at p. 4). Here, a review of the record evidence leads the Board to conclude that the Judge's findings and conclusions with regard to Criterion E are reasonable.

Applicant cites his honesty and his job performance as matters in mitigation. There is no evidence in the record that deals with Applicant's job performance and the only record evidence bearing on Applicant's honesty is the evidence concerning his falsifications. The Board will not conclude a Judge erred based on factual assertions made on appeal that do not have any support in the record evidence. Given the state of the record evidence, it was not arbitrary or capricious for the Judge to conclude that Applicant failed to overcome the Government's case against him.

Applicant contends that his initial Chapter 13 bankruptcy filing, which was 17 years old at the time of the close of the

record in this case, should not now be held against him. This argument is without merit. In a case involving a longstanding pattern of financial difficulty, it is obviously relevant for the Judge to consider a 1981 Chapter 13 bankruptcy, especially where it is part of a continuing history of financial woes that was still unresolved when the record evidence was closed.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's June 30, 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

1. Applicant's appeal brief contains some statements that go beyond the record evidence. Such statements constitute new evidence, which the Board cannot consider. Directive, Additional Procedural Guidance, Item 29.