

DATE: June 19, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0004

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey-Anderson issued a decision, dated April 3, 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 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 January 5, 1998 to Applicant. The SOR was based on Criterion F (Financial Considerations). Applicant submitted an answer to the SOR, in which she indicated she did not want a hearing in her case. A File of Relevant Material (FORM) was prepared. A copy of the FORM was provided to Applicant, who did not submit a response to the FORM.

The case was then assigned to the Administrative Judge for determination. The Judge issued a written decision, dated April 3, 1998, in which she 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.

On April 8, 1998, Applicant mailed a notice of appeal, which was received by the Board on April 15, 1998 and acknowledged the same day. Under cover of a letter dated April 15, 1998, an amended page 5 of the Administrative Judge's decision was sent to Applicant. [\(1\)](#)

Under the doctrine of administrative finality, the parties are entitled to expect an Administrative Judge's issued decision will not be changed except through the normal appeal process. The issuance of an amended decision or an amendment to a decision will interfere with the ability of a party to make a reasoned decision whether to appeal or cross-appeal a decision. Furthermore, once a Judge has issued a decision, the clock begins to run on the losing party's right to appeal.

Directive, Additional Procedural Guidance, Item 28 (notice of appeal must be received by Board within 15 days of date of Administrative Judge's decision). Because the timely receipt of a notice of appeal is mandatory and jurisdictional,⁽²⁾ it is imperative that the parties not be confused or left to guess at their peril about when the time for filing a notice of appeal begins and ends. Finally, any attempt to amend an issued decision runs the risk that the action could result in a situation that is in derogation of the appeal rights of the parties, the jurisdiction of the Board, or both.

In this case, Applicant's notice of appeal was mailed seven days before the amended page 5 was issued. Furthermore, Applicant's notice of appeal was received by the Board the same day the amended page 5 was issued. Accordingly, the Judge had no jurisdiction over the case. Therefore, the amended page 5 is a legal nullity. The original, unamended version of the Judge's April 3, 1998 decision is the one that is before the Board on appeal.⁽³⁾

Appeal Issue

The Administrative Judge made findings about Applicant's history of financial problems, including Applicant's failure to deal with several delinquent debts totaling in excess of \$28,700 despite being employed since December 1990. The Judge recognized that Applicant's financial problems initially arose out of "unfortunate circumstances largely beyond the Applicant's control," but concluded Applicant's failure to deal with her delinquent debts since December 1990 demonstrated financial irresponsibility within the meaning of Criterion F and warranted an adverse security clearance decision.

Applicant has not challenged the Administrative Judge's factual findings. However, Applicant argues: (a) her delinquent debts arose several years ago; (b) she and her husband have been current on all their other debts and have an excellent credit rating; (c) she does not intend to get into a similar situation again; and (d) she did not seek to discharge her delinquent debts in bankruptcy because she would have needed to borrow money to complete the filing, and filing for bankruptcy would have resulted in loss of her employment. The Board construes these arguments as raising the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes Applicant has failed to demonstrate the Judge erred.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Under Criterion F, the security eligibility of an applicant is placed under question when that applicant has 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. *See, e.g.*, ISCR Case No. 97-0452 (March 23, 1998) at p. 3.

The Administrative Judge properly took into consideration that Applicant's delinquent debts initially arose because of circumstances beyond Applicant's control. However, it was entirely reasonable for the Judge to consider Applicant's failure to deal with and resolve those delinquent debts since she gained employment in December 1990. Given Applicant's history of unsatisfied delinquent debts, the Judge properly considered whether Applicant had demonstrated financial reform and rehabilitation. *See* Directive, Section F.3.e. ("Absence or presence of rehabilitation") and Section F.3.f. ("Probability that the circumstances or conduct will continue or recur in the future").

Furthermore, the favorable evidence cited by Applicant on appeal does not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. The Judge had to weigh the evidence, both favorable and unfavorable, apply pertinent Adjudicative Guidelines, and decide whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. *See, e.g.*, ISCR Case No. 97-0618 (June 11, 1998) at p. 3. Nothing in Applicant's appeal brief demonstrates the Judge weighed the record evidence in an arbitrary or capricious manner.

Considering the record as a whole, Applicant's overall history of delinquent debts provides a rational basis for the Administrative Judge to have doubts about Applicant's security eligibility and render an adverse security clearance decision. None of Applicant's appeal arguments demonstrates the Judge's adverse decision is arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to meet her burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's April 3, 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. The amended page 5 is identical to the original page 5 except for the last paragraph.
2. Hearing Office Administrative Judges have no jurisdiction or authority to relieve a party from the Directive's notice of appeal requirements, nor to take any action that infringes upon or impairs the jurisdiction and authority of the Board, or designated Board member, to determine whether there is good cause to accept a late notice of appeal.
3. Given the particular facts of this case and the particular arguments raised by Applicant on appeal, neither Applicant nor Department Counsel is prejudiced by the Board's refusal to recognize the amended page 5.