

DATE: November 12, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0156

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

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

#### FOR APPLICANT

*Pro Se*

Administrative Judge Jerome H. Silber issued a decision, dated July 31, 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**

On February 26, 1998, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant. The SOR was based on Criterion F (Financial Considerations).

A hearing was held on June 17, 1998. The Administrative Judge subsequently issued a written decision. The Judge found Applicant had \$86,400 in debts discharged in bankruptcy on March 13, 1991, and Applicant had debts in excess of \$107,000 discharged in bankruptcy on May 15, 1998. The Judge considered Applicant's history of financial difficulties and concluded Applicant's history of financial irresponsibility had negative security implications that were not overcome by the favorable evidence presented by Applicant. The Judge 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 decision.

#### **Appeal Issue**

Applicant does not challenge the Administrative Judge's factual findings about his history of financial difficulties. Rather, Applicant contends that the Judge should not have made an adverse security clearance decision because his debts were discharged in bankruptcy and were thus "satisfied" and should no longer be considered against him.

Applicant also contends he is not financially overextended and that he presented evidence that mitigated any security concerns raised by his financial history. The Board construes Applicant's arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

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. 508, 511 n.6 (1980); *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Furthermore, the federal government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke that person'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). Under Criterion F, the security eligibility of an applicant is placed into question when that applicant has a history of excessive indebtedness or recurring financial difficulties. *See, e.g.*, ISCR Case No. 96-0544 (May 12, 1997) at pp. 5-6 (discussing security implications of financial problems).

In this case, the Administrative Judge made findings about Applicant's history of financial problems. Those findings, which are supported by the record evidence and were not challenged on appeal, provide a rational basis for the Judge's concerns about Applicant's suitability for access to classified information. Furthermore, the record evidence provided the Judge with a rational basis for his doubts about Applicant's ability to avoid financial problems in the future. Moreover, the Judge acted reasonably when he concluded the discharge of Applicant's debts in bankruptcy did not eliminate the security concerns raised by Applicant's history of financial difficulties. Although a discharge of debts in bankruptcy may provide an applicant with a fresh start financially, it does not immunize the applicant's history of financial problems from scrutiny for its security significance. *See, e.g.*, ISCR Case No. 97-0016 (December 31, 1997) at p. 4. Accordingly, it was entirely proper for the Judge to consider Applicant's overall financial history and evaluate its security significance despite the fact that Applicant's debts were discharged in bankruptcy.

Finally, the favorable evidence presented by Applicant did not preclude the Administrative Judge from making an adverse decision. Although Applicant may not be financially overextended in the immediate aftermath of his second bankruptcy, the Judge must consider the record evidence as a whole (Directive, Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. *See, e.g.*, ISCR Case No. 97-0783 (August 7, 1998) at p. 5. Considering the record as a whole, the Board concludes the favorable evidence presented by Applicant did not require the Judge, as a matter of law, to make a favorable security clearance decision.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's July 31, 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