

DATE: February 26, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0291

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 September 25, 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 decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated May 29, 1998 to Applicant. The SOR was based on Criterion F (Financial Considerations) and Criterion E (Personal Conduct).

Applicant submitted an answer to the SOR, in which he stated "I wish to have a decision without a hearing." A File of Relevant Material (FORM) was prepared, and Applicant was provided with a copy of the FORM. Applicant did not submit a response to the FORM. The case was then assigned to the Administrative Judge for determination. The Judge subsequently issued a written decision in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On September 25, 1998, the Administrative Judge's decision was mailed to Applicant through his employer's address. The decision was returned, undelivered.

On November 16, 1998, the Board received a letter from Applicant seeking to appeal the Administrative Judge's adverse decision. The presence of the returned decision in the case file corroborated Applicant's assertion that he had not received the Judge's decision. Accordingly, the Chairman accepted Applicant's late notice of appeal, and sent him a copy of the Judge's decision.

Appeal Issue

The Administrative Judge found that Applicant had a history of financial irresponsibility that began about seven years earlier and continued up to June 1998. The Judge found that Applicant had recently satisfied various small debts, but that he still had not satisfied two civil judgments (totaling approximately \$36,000) entered against him in June 1994 and August 1994 for violating the terms of a constructive trust. The Judge noted the seriousness of Applicant's misconduct in violating the terms of the constructive trust, which deprived his two minor nephews of life insurance proceeds intended for their benefit. The Judge found Applicant had failed to present evidence of rehabilitation and concluded he had failed to overcome the security implications of his proven misconduct.

Applicant makes the following arguments on appeal: (a) the Administrative Judge erred by finding that he did not make payments toward two outstanding civil judgments (totaling more than \$35,000) entered against him in June 1994 and August 1994; and (b) Applicant "feel[s] badly" about his "big mistake" and plans to pay "what [he] can pay to fulfill the judgement, and give back to the children what is due to them." The Board construes these arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

Considering the record as a whole, the Administrative Judge had a rational basis for finding Applicant had failed to make payments to satisfy the civil judgments entered against him. There is no record evidence that Applicant made any payments toward satisfying the civil judgments against him. (Applicant's assertions to the contrary on appeal are not record evidence.) In January 1998, Applicant told a government investigator that he still owed approximately \$36,000 on the civil judgments (FORM, Gov. Ex. 7). Furthermore, as late as June 1998, Applicant admitted the judgments were still outstanding and he was trying to contact a lawyer to set up a monthly payment plan (FORM, Gov. Ex. 3). A promise to make payments in the future is not evidence that would justify a finding by the Judge that Applicant has made payments toward satisfying the civil judgments against him.

The record evidence supports the Administrative Judge's findings about Applicant's financial misconduct and the civil judgments against him arising out of that misconduct. Given the evidence of Applicant's financial misconduct, Applicant had the burden of presenting evidence "to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive, Additional Procedural Guidance, Item 15. Considering the record as a whole, the Judge had a rational basis for concluding Applicant failed to meet that burden.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Applicant's financial misconduct provided a rational basis for the Administrative Judge's negative conclusions about Applicant's judgment, reliability and trustworthiness and her overall adverse security clearance decision.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's September 25, 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 Administrative Judge entered favorable formal findings in connection with five of the SOR allegations under Criterion F (SOR 1.a., 1.b., 1.d., 1.e. and 1.f.). The Judge also entered favorable formal findings in connection with the SOR allegations under Criterion E (SOR 2.a. and 2.b.). Those favorable findings are not at issue on appeal.