

DATE: January 22, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0257

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Barry M. Sax issued a decision, dated September 2, 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 following issues: (1) whether the Administrative Judge's factual findings are supported by the record evidence; and (2) 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 April 13, 1998 to Applicant. The SOR was based on Criterion J (Criminal Conduct), Criterion F (Financial Considerations), and Criterion E (Personal Conduct).

Applicant submitted an answer to the SOR, in which she indicated she did not wish to have a hearing. A File of Relevant Aerial (FORM) was prepared, and a copy of the FORM was provided to Applicant. Applicant did not submit a response to the FORM. The case was then assigned to the Administrative Judge for disposition. The Judge 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 Applicant's appeal from the Judge's adverse decision.

Appeal Issues⁽¹⁾

1. Whether the Administrative Judge's factual findings are supported by record evidence. Applicant does not challenge the Administrative Judge's findings that: (a) she embezzled approximately \$22,000 from her then-employer in 1996; (b) she falsified a security questionnaire in September 1997 by failing to disclose that she had been fired from her job in 1996 because of her embezzlement; (c) she falsified an employment application by falsely claiming she had received a bachelor of science degree from a major university; and (d) she had overdue debts worth more than \$40,000.⁽²⁾

However, Applicant asserts: the overdue debts were incurred by her ex-husband due to his drug addiction before they became divorced; her ex-husband had agreed to pay the balance of an auto loan; and she had received no bills or collection notices because she had moved away to escape and hide from her ex-husband. The Board construes Applicant's assertions as challenging the Judge's rejection, as not credible, of Applicant's explanations for why she had not paid or otherwise addressed her outstanding debts.

This case involves a decision made based on a FORM, not a hearing. Accordingly, the Administrative Judge's credibility determinations about Applicant are not entitled to the same degree of deference given to credibility determinations based on personal observation of an applicant's testimony at a hearing. *See, e.g.*, ISCR Case No. 97-0752 (December 4, 1998) at p. 3 n.1. A review of the record evidence shows that Applicant has given consistent explanations for the facts and circumstances of how her debts arose. However, Applicant has not given consistent explanations about the reason(s) why the debts were not satisfied. Considering the inconsistencies in Applicant's explanations for why her debts were not satisfied, Applicant has failed to demonstrate the Judge acted in an arbitrary or capricious manner by finding her explanations not credible. The Board need not agree with the precise wording of the Judge's findings about Applicant's failure to satisfy her debts to conclude that Applicant has failed to demonstrate those findings are arbitrary, capricious, or contrary to law.

2. Whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law. Applicant asserts: (a) she does not have access to classified information and only needs a security clearance to have access to work in the building; (b) she understands her embezzlement was wrongful and regrets her misconduct; (c) her personal problems arose out of her marriage to an abusive drug user who she has since divorced; (d) she has changed her life since 1996; and (e) she accepts responsibility for her past conduct, but asks for another chance. The Board construes Applicant's assertions as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

It is irrelevant whether Applicant's position requires a security clearance for access to a secure area or for access to classified information. Either type of access implicates the national security interests of the United States and requires a finding that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. Accordingly, the Administrative Judge's decision is not rendered arbitrary, capricious, or contrary to law by the fact that Applicant seeks a security clearance for access to a building and not for direct access to classified information.

The Administrative Judge considered the facts and circumstances of Applicant's embezzlement of approximately \$22,000 from her then-employer in 1996, Applicant's false statements, and her failure to deal with her outstanding debts. The Judge concluded Applicant's conduct demonstrated she lacked the judgment, reliability, and trustworthiness required of persons seeking a security clearance. The Judge further concluded Applicant had not met her burden of demonstrating extenuation, mitigation or changed circumstances sufficient to overcome the negative security implications of her conduct. The Judge's analysis was consistent with his obligations under the Directive to weigh the evidence, both favorable and unfavorable, and decide whether Applicant had met her burden of demonstrating extenuation, mitigation or changed circumstances sufficient to warrant a favorable security clearance decision. Directive, Section F.3.; Additional Procedural Guidance, Items 15 and 25.

The federal government must be able to repose a high degree of trust and confidence in persons granted a security clearance. *Snepp v. United States*, 444 U.S. 508, 511 n.6 1980). Applicant's 1996 embezzlement, her false statements, and her failure to deal with her outstanding debts in a reasonable manner, provide a rational basis for the Administrative Judge's negative conclusions about Applicant's security eligibility. Even if Applicant's former marriage to a drug abuser were the source of many of her problems, it did not relieve Applicant of the obligation to address her problems in a responsible and reasonable manner. *See, e.g.*, ISCR Case No. 97-0184 (December 8, 1998) at p. 4 (discussing reasons why applicants must be held to standard of conduct expected of a reasonable person). Nothing in Applicant's appeal brief demonstrates the Judge acted in a manner that is arbitrary, capricious, or contrary to law by concluding that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Conclusion

Applicant has failed to meet her burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's September 2, 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 statements about her case that go beyond the record evidence. Such statements constitute new evidence, which the Board cannot consider on appeal. Directive, Additional Procedural Guidance, Item 29. Upon receipt of the FORM, Applicant had an opportunity to submit additional information for the Administrative Judge to consider in her case. Applicant's failure to submit such additional information in response to the FORM constitutes a waiver of her right to have such information considered in her case.

2. The Administrative Judge made a formal finding in Applicant's favor with respect to the debt alleged in SOR ¶1.p. That favorable finding is not at issue on appeal.