

DATE: April 2, 1999

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0445

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

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

#### FOR APPLICANT

#### *Pro Se*

Administrative Judge Claude R. Heiny issued a decision, dated December 8, 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 erred by finding Applicant falsified a security clearance application by denying that she had delinquent debts; (2) whether the Administrative Judge erred by finding Applicant refused to sign credit release forms requested by a government investigator; and (3) 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 June 30, 1998 to Applicant. The SOR was based on Criterion F (Financial Considerations), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct).

A hearing was held on November 5, 1998. The Administrative Judge subsequently 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 that adverse decision.

### **Appeal Issues**

1. Whether the Administrative Judge erred by finding Applicant falsified a security clearance application by denying that she had delinquent debts. Applicant asserts that she has never falsified information knowingly, claiming that she had problems completing the electronic security form. Applicant challenges the Administrative Judge's characterizations of her false answers on a security questionnaire. Since the Administrative Judge ultimately found for Applicant in the matter of both SOR allegations which pertained to the false answers (SOR 2.a. and SOR 3.a.), the Board does not need

to address the issue any further.

2. Whether the Administrative Judge erred by finding Applicant refused to sign credit release forms requested by a government investigator. The Administrative Judge found that a Defense Security Service special agent who interviewed Applicant asked her to sign credit releases, but that Applicant refused to sign the release forms. On appeal, Applicant contends she told the special agent that she was refusing to pay two debts because they were not fair to her, but that she did not refuse to sign any release forms.

Absent a showing that the Administrative Judge acted in a manner that is arbitrary, capricious, or contrary to law, the Board will not disturb the Judge's weighing of the record evidence. *See, e.g.*, ISCR Case No. 98-0380 (March 8, 1999) at p. 5. In this case, there is conflicting record evidence on the issue of the credit release forms. The Judge had the opportunity to assess the credibility of the witnesses and to weigh the conflicting record evidence about the credit release forms. Nothing in Applicant's brief demonstrates the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law or that his finding about Applicant's refusal to sign credit release forms is not sustainable. Error is not demonstrated by Applicant's ability to argue for an alternate interpretation of the record evidence. *See, e.g.*, ISCR Case No. 96-0457 (December 8, 1997) at p. 3 (citing *American Textile Mfrs Institute v. Donovan*, 452 U.S. 490, 523 (1981)). Therefore, the Board sustains the Judge's finding that Applicant refused to sign the credit release forms.

3. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. On appeal, Applicant does not dispute the Administrative Judge's findings about her history of financial problems or her failure to resolve various delinquent debts. However, Applicant asserts: (a) she needs a security clearance to keep her job, and loss of her job would be a hardship to her and her mother; (b) her financial difficulties arose because of circumstances beyond her control; (c) despite her financial problems, she has never engaged in illegal or criminal acts; (d) she has decided to file for bankruptcy to have a clean slate for the future; and (e) she is meeting all her current financial obligations on a regular basis. The Board construes these assertions as raising the issue of whether the Judge's adverse security clearance 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. *Snapp v. United States*, 444 U.S. 507, 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). 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). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). All that is necessary is proof of facts and circumstances that indicate that an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See, e.g.*, ISCR Case No. 98-0349 (February 3, 1999) at pp. 3-4.

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. 98-0349 (February 3, 1999) at p. 4. Furthermore, a person's refusal to provide relevant and material information to the government provides a rational basis for denial or revocation of access to classified information for that person. *Gayer v. Schlesinger*, 490 F.2d 740, 754 (D.C. Cir. 1973); *Clifford v. Shoultz*, 413 F.2d 868 (9th Cir. 1969), *cert. denied*, 396 U.S. 962 (1969). In this case, the Administrative Judge's findings about Applicant's refusal to sign credit release forms and her history of financial difficulties provide a rational basis for the Judge's concerns about Applicant's suitability for access to classified information. Consistent with the requirements of Section F.3., the Judge considered the record evidence, both favorable and unfavorable, as well as pertinent Adjudicative Guidelines. The Judge specifically took into account the evidence that some of Applicant's financial problems initially arose because of circumstances beyond her control (*i.e.*, period of unemployment). However, the Judge concluded that Applicant failed to provide a satisfactory explanation for most of her delinquent debts and her failure to deal with them after her period of unemployment ended in mid-1994. The Judge's analysis reflects a reasonable interpretation of the record evidence that is consistent with pertinent provisions of the Directive.

Applicant's stated intention to file for bankruptcy (made during the proceedings below and repeated on appeal) does not

render the Administrative Judge's decision arbitrary, capricious, or contrary to law. A promise to take remedial steps in the future does not constitute evidence of demonstrated reform and rehabilitation. *See, e.g.*, ISCR Case No. 96-0544 (May 12, 1997) at p. 5 (promise to take remedial action in future, however credible and sincere, not evidence of actual rehabilitation). Furthermore, even if Applicant had filed a bankruptcy petition and received a discharge in bankruptcy by the time of the hearing, such a discharge in bankruptcy would not have precluded the Judge from assessing the security significance of Applicant's overall history of financial problems, including her failure to deal with her delinquent debts after her period of unemployment ended in mid-1994. *See, e.g.*, ISCR Case No. 98-0349 (February 3, 1999) at p. 3. A discharge in bankruptcy may give a person a financial fresh start, but it does not substitute for evidence of a demonstrated track record of financial reform, a track record that is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue access to classified information for her. *See* Directive, Additional Procedural Guidance, Item 15.

## **Conclusion**

Applicant has failed to demonstrate the Administrative Judge committed error. Accordingly, the Board affirms the Judge's December 8, 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