

DATE: June 27, 2000

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0608

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

Administrative Judge John G. Metz, Jr. issued a decision dated April 14, 2000, in which he concluded that 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.

The Board has jurisdiction under Executive Order 10865 and Department of Defense Directive 5220.6 dated January 2, 1992 (as amended).

Applicant's appeal presents the issue of whether the Administrative Judge's decision was arbitrary, capricious or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant dated September 10, 1998. The SOR was based on Criterion J (Criminal Conduct). On April 14, 2000, the Administrative Judge issued a decision based on the administrative record and concluded that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed the adverse decision to the Board.

**Appeal Issue**

Whether the Administrative Judge's decision was arbitrary capricious or contrary to law. Applicant does not challenge any of the Administrative Judge's findings of fact below. She does submit new evidence and bases part of her appeal on new evidence. The Appeal Board is not permitted to consider new evidence on appeal (See, Directive, Additional Procedural Guidance, Item 29).

Applicant argues that she has been a government contractor for years, never had her trustworthiness questioned and would not do anything to jeopardize her position with the company or the government. The Board construes these assertions as arguing that the Administrative Judge's decision was arbitrary, capricious or contrary to law.

The Administrative Judge reasonably concluded that Applicant's history of failing to file her federal income taxes for several years in the 1990's is significant. 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). Security requirements include consideration of a person's judgment, reliability, and sense of his or her obligations. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy* 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information. *See, e.g.*, ISCR Case No. 98-0810 (June 8, 2000); ISCR Case No 98-0761 (December 27, 1999).

Applicant's failure to file her federal income tax returns provided a reasonable basis for the adverse security clearance decision below. In weighing the evidence, the Judge had to consider all the evidence, favorable and unfavorable, and decide whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. The mere presence of favorable evidence in the record does not require an Administrative Judge to make a favorable security clearance decision. Accordingly, the favorable evidence cited by Applicant on appeal does not make the Judge's adverse decision arbitrary, capricious, or contrary to law.

### **Conclusion**

Applicant has failed to meet her burden of demonstrating error below. Accordingly the Board affirms the Administrative Judge's April 14, 2000 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