

DATE: July 12, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0648

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Wilford H. Ross issued a decision, dated April 23, 1999, 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

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

Applicant submitted an answer to the SOR, in which she stated she wanted "to have a decision without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant. No response to the FORM was received from Applicant. The case was then submitted to the Administrative Judge to make a decision.

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 the Judge's adverse decision.

Administrative Judge's Findings and Conclusions

Applicant was indicted in June 1983 and charged with fifteen counts of negotiating bad checks. She pleaded guilty to two counts and was fined, ordered to make restitution, and placed on three years probation. Her probation ended in October 1987 (SOR 1.a).

Applicant was indicted in November 1987 and charged with to counts of welfare fraud and two counts of perjury. She

pleaded guilty to one count of welfare fraud and was fined, ordered to pay restitution, and placed on five years probation. Applicant's probation was revoked in 1993 when she failed to pay the restitution, but was restored in November 1993. She completed probation, but is still paying the court-ordered restitution (SOR 1.b.).

Applicant was indicted on November 1996 and charged with one count of welfare fraud and two counts of perjury. In June 1997, Applicant pleaded guilty to one count of welfare fraud. She was ordered to pay restitution, perform public service, and placed on three years probation. Probation was revoked in May 1998 after Applicant failed to perform public service. Applicant paid the restitution and, as of October 15, 1998, was completing the public service. Applicant's probation was reinstated in August 1998 and is due to expire in November 2000 (SOR 1.c.).

Applicant's conviction for writing bad checks (SOR 1.a.) was mitigated by the passage of time and the absence of similar misconduct by Applicant since then. However, Applicant's convictions for welfare fraud in 1988 (SOR 1.b.) and 1997 (SOR 1.c.) were not extenuated or mitigated.

Applicant owes approximately \$25,000 for a student loan she obtained in 1978. Her federal income tax refunds are being used to repay this loan (SOR 2a.). Applicant also owes several other unsatisfied debts ranging in amounts from approximately \$30 to \$400 (SOR 2.b., SOR 2.c., SOR 2.d., SOR 2.e., SOR 2.f., and SOR 2.h.). Applicant owes approximately \$7,778 for child support arrearages, for which she is paying \$25.00 a week through a wage assignment order (SOR 2.g.). Applicant owed another debt for approximately \$625, but that debt was current as of October 1998 (SOR 2.i.). Applicant went to a credit counseling service, which told Applicant that it was unable to help her, but made several recommendations for addressing her financial problems.

Apart from the one debt that was current (SOR 2.i.), Applicant has only recently begun to make any effort to get her financial difficulties under control. She has not yet established a repayment plan and has not yet shown a good faith effort to repay or otherwise resolve her overdue debts.

The Administrative Judge entered formal findings in favor of Applicant with respect to SOR 1.a. and SOR 2.i., but formal findings against Applicant with respect to the rest of the SOR paragraphs. The Judge concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Appeal Issue⁽¹⁾

Applicant does not challenge the Administrative Judge's findings about her convictions for welfare fraud or her delinquent debts. Rather, Applicant contends her conduct is not as serious as the conduct of the President of the United States or the theft of nuclear secrets by China. Under the Directive, the jurisdiction of the Judge and the Board is limited to adjudicating industrial security clearance cases. In the course of adjudicating Applicant's security eligibility, neither the Judge nor the Board has any jurisdiction or authority to pass judgment on the extraneous matters raised by Applicant. As the Board has previously noted, "These proceedings are not the proper forum to address, directly or indirectly, the merits of matters that are committed to the authority and jurisdiction of another governmental body." ISCR Case No. 97-0184 (December 8, 1998) at p. 8.

Making allowances for Applicant's *pro se* status, the Board construes Applicant's appeal as raising the issue of whether her criminal conduct and financial difficulties are sufficient to warrant an adverse security clearance decision. For the reasons that follow, the Board concludes the Administrative Judge's adverse decision is not 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. 507, 511 n.6 (1980). Security requirements include consideration of a person's judgment, reliability, and trustworthiness. *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 fails to properly handle or safeguard classified information before it can deny or revoke that applicant's access to such information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). All that is necessary is proof of facts and circumstances that indicate 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 given access to classified information. *See, e.g.*, ISCR Case 98-0394 (June 10, 1999) at p. 7. The Administrative Judge's unchallenged findings about Applicant's convictions for welfare fraud and her financial difficulties provide a rational basis for the Judge's adverse conclusions about Applicant's security eligibility and the Judge's adverse security clearance decision.

Conclusion

Applicant has failed to meet her burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's April 23, 1999 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's formal findings with respect to SOR 1.a. and SOR 2.i. are not at issue on appeal.