

DATE: March 30, 2000

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0200

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

Administrative Judge Richard A. Cefola issued a decision dated December 2, 1999, in which he concluded it is not clearly consistent with the national interest to grant 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 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 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 17, 1999 to Applicant. The SOR was based on Criterion J (Criminal Conduct)<sup>(1)</sup> and Criterion F (Financial Considerations). Applicant requested that the case be decided without a hearing. On December 2, 1999 the Administrative Judge issued a decision in which he concluded that 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 Administrative Judge's adverse decision.

**Appeal Issue**

1. Whether the Administrative Judge's decision is arbitrary, capricious or contrary to law. Applicant notes that he admitted to the essential facts under Criterion F, that he has now filed the tax returns from past years, that any refunds were credited to his balance and that he intends to pay his remaining tax indebtedness. Applicant also notes that without his clearance he may lose his job and be unable to pay his debts. Applicant cites a previous statement in the record as explanation for his situation. He also believe his honesty and dedication to his employer prove his loyalty and trustworthiness. The Board construes Applicant's arguments as presenting the issue of whether the Administrative Judge's decision is arbitrary, capricious or contrary to law.

Applicant does not challenge any of the Administrative Judge's findings of fact. Indeed he points out that he admitted

key facts before the Administrative Judge's issued his decision. The Administrative Judge focused on Applicant's indebtedness to Federal and State taxing authorities (in excess of \$28,700) and Applicant's lack of action to remedy that indebtedness in the five months between Applicant's reply to the SOR and his response to the File of Relevant Material (FORM). None of Applicant's arguments demonstrate error in the Administrative Judge's analysis of his tax indebtedness. Applicant's track record of not taking action to resolve his tax debts during the five month interval between the FORM and the SOR is a legitimate matter for the Judge to weigh against Applicant's stated intent to resolve his debts.

Applicant's understandable concern for the adverse consequences of the Administrative Judge's decision does not demonstrate error by the Judge (*See*, ISCR Case No. 99-0431, January 28, 2000, p. 3, "An applicant is not made more or less suitable for a security clearance based on how a security clearance decision might affect the applicant.") The negative security significance of Applicant's financial difficulties is not reduced or diminished by the adverse consequences an unfavorable decision may have for Applicant.

Applicant's argument about how he came to be in debt does not ameliorate the Judge's legitimate concern about Applicant's more recent conduct of not acting to resolve the debt. Similarly, Applicant's belief that his honesty and dedication to his employer demonstrate his loyalty and trustworthiness do not prove error in the Judge's analysis. Furthermore, Applicant's job performance does not negate the security significance of his financial difficulties. Applicant's disagreement with the Judge's weighing of the evidence in Applicant's case does not demonstrate that the Administrative Judge erred. (*See*, ISCR Case No. 99-0417, February 24, 2000, at p. 6).

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error in the decision below. Accordingly, the Board affirms the Administrative Judge's December 2, 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 favorable findings and conclusions under Criterion J are not at issue on appeal.