

DATE: April 18, 2000

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0296

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Administrative Judge Jerome H. Silber issued a decision, dated September 27, 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 following issues: (1) whether the Administrative Judge made some erroneous findings; (2) whether the Administrative Judge erred in his application of pertinent provisions of the Financial Considerations Adjudicative Guidelines; 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 May 13, 1999 to Applicant. The SOR was based on Criterion B (Foreign Influence), Criterion C (Foreign Preference), and Criterion F (Financial Considerations).

A hearing was held on August 20, 1999. At the hearing, Department Counsel informed the Administrative Judge that it was withdrawing the Criterion C allegations. The Administrative Judge issued a written decision, dated September 27, 1999, 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 Administrative Judge's adverse security clearance decision.

**Appeal Issues <sup>(1)</sup>**

1. Whether the Administrative Judge made some erroneous findings. Applicant challenges some of the Administrative Judge's factual findings. Specifically, Applicant contends the Judge erred by finding: (a) Applicant has not sought the

assistance of commercial credit counseling services or debt consolidators; and (b) Applicant did not get another part-time job that was recommended by a financial planner.

(a) The record evidence shows that Applicant obtained free, informal advice from a financial planner about her debt problems. Indeed, the Administrative Judge noted that Applicant had obtained such free, informal advice. Nothing in Financial Considerations Mitigating Condition 4<sup>(2)</sup> requires the financial counseling must be formal or paid for by an applicant. Therefore, the fact that Applicant got free, informal advice from a financial planner does not preclude application of itigating Condition 4. However, the Judge's error on this point is harmless because the record evidence shows Applicant did not follow the advice she was given by the financial planner.

(b) The Administrative Judge erred by finding that the financial planner advised Applicant to get another part-time job. Applicant correctly notes the record evidence shows the financial planner advised her to get a part-time job, not another part-time job. However, considering the record as a whole, the Board concludes this factual error by the Judge was harmless because it is not outcome determinative. *See, e.g.*, ISCR Case No. 97-0595 (February 19, 1999) at p. 3 (under harmless error doctrine, Judge's decision can be affirmed if Board concludes there is not a significant chance that the identified errors fatally affected an otherwise sustainable decision).

2. Whether the Administrative Judge erred in his application of pertinent provisions of the Financial Considerations Adjudicative Guidelines. Applicant makes several arguments that the Board construes as raising the issue of whether the Judge erred in his application of pertinent provisions of the Adjudicative Guidelines. Specifically, Applicant argues: (a) the Judge should not have applied Financial Considerations Disqualifying Conditions 1 and 3; and (b) the Judge should have applied Financial Considerations Mitigating Conditions 1, 2, 3, 4, and 6. For the reasons that follow, the Board concludes Applicant's arguments fail to demonstrate the Judge erred.

a. Financial Considerations Disqualifying Conditions 1 and 3. The Administrative Judge found that Applicant has a history of not meeting her financial obligations due to an inability to do so, and applied Financial Considerations Disqualifying Conditions 1<sup>(3)</sup> and 3.<sup>(4)</sup> The Applicant argues the Judge erred because: (i) she does not have a history of not meeting financial obligations; and (ii) she currently has the ability to meet her financial obligations. Applicant's arguments are not persuasive.

(i) Applicant contends she does not have a history of not meeting her financial obligations because her financial problems are an isolated incident. Applicant's argument lacks merit. The Administrative Judge found that Applicant has several delinquent debts that include four college loans incurred from April 1996 to ay 1997 that have been delinquent since Spring 1998, and five credit card accounts opened during the period from January 1996 to August 1998 that are currently delinquent. Those findings are supported by the record evidence and provide a rational basis for the Judge's conclusion that Applicant has a history of not meeting her financial obligations. It is not tenable for Applicant to call her history of various delinquent debts an isolated incident.

(ii) Applicant contends she currently has the ability to meet her financial obligations and that there has been no continuation of credit delinquencies by her. The Administrative Judge found that Applicant was making only minimum required monthly payments toward her college loans, that Applicant's monthly income was not enough for her to pay her delinquent debts, that Applicant has not yet addressed her delinquent credit card accounts, and that Applicant is current with a number of revolving credit accounts she has with some retailer. Those findings are supported by the record evidence. The fact that Applicant is current with a number of revolving credit accounts does not negate or diminish the record evidence that she currently is financially unable to satisfy her outstanding student loans and her delinquent credit card accounts.

b. Financial Considerations Mitigating Conditions 1, 2, 3, 4, and 6. Applicant contends the Administrative Judge should have applied these Adjudicative Guidelines in her favor.

(i) Financial Considerations Mitigating Condition 1.<sup>(5)</sup> The Administrative Judge did not cite or apply this Mitigating Condition. Applicant argues the Judge should have applied this Mitigating Condition because her financial problems originated during the period 1996-1997 and her delinquent credit card debts were charged off as bad debts during the period 1997-1998. Applicant's argument lacks merit. Applicant's financial problems may have begun three or four years

ago, but her financial difficulties are still unresolved as recently as the hearing. Given the unresolved nature of her financial difficulties, the Judge was not required to apply Financial Considerations Mitigating Condition 1.

(ii) Financial Considerations Mitigating Condition 2.<sup>(6)</sup> The Administrative Judge did not cite or apply this Mitigating Condition. Applicant contends the Judge should have applied this Mitigating Condition because her delinquent debts were an isolated incident. In support of this contention, Applicant argues that her delinquent credit card debts were incurred in approximately the same year (1996-1997) and they were charged off as bad debts within approximately the same year (March 1997-January 1998). Applicant's argument lacks merit. The record evidence shows that Applicant opened five different credit card accounts over the period 1996-1997 and allowed those accounts to become delinquent. Multiple acts of financial mismanagement that occur over a period of several months cannot reasonably be characterized as "an isolated incident."

(iii) Financial Considerations Mitigating Condition 3.<sup>(7)</sup> The Administrative Judge did not cite or apply this Mitigating Condition. In one part of the appeal brief, Applicant asserts the Judge should have applied this Mitigating Condition. In another part of the appeal brief, Applicant essentially concedes she has not satisfied this Mitigating Condition. There is no presumption of error below and the appealing party has the burden of raising claims of error with specificity. Directive, Additional Procedural Guidance, Item 29. Applicant's brief does not set forth any argument or rationale for why she believes the Judge should have applied this Mitigating Condition. Accordingly, Applicant has failed to meet her burden of demonstrating the Judge erred by not applying this Mitigating Condition.

(iv) Financial Considerations Mitigating Condition 4.<sup>(8)</sup> The Administrative Judge cited Financial Considerations Mitigating Conditions 4. However, the Judge concluded that there are not clear indications that Applicant's delinquent credit card debts are being resolved or are under control.

Applicant contends the Judge erred by not applying this Mitigating Condition because she has received counseling from a financial planner concerning her debt situation. Applicant's argument fails to demonstrate the Judge erred. Applicant's argument focuses on the first part of this Mitigating Condition ("[T]he person has received or is receiving counseling for the problem . . .") and ignores the second part of it (" . . . and there are clear indications that the problem is being resolved or is under control"). Given the record evidence that Applicant still has not addressed or resolved her delinquent credit card accounts, the Judge had a rational basis for his negative conclusion concerning this Mitigating Condition.

(v) Financial Considerations Mitigating Condition 6.<sup>(9)</sup> The Administrative Judge cited Financial Considerations Mitigating Condition 6. However, the Judge's decision does not appear to contain any substantive discussion about Financial Considerations Mitigating Condition 6. At the bottom of page 8 and the top of page 9 of the Judge's decision, there is a garbled passage that may or may not be referring to Financial Considerations Mitigating Condition 6. For purposes of deciding this appeal, the Board will assume the Judge did not apply this Mitigating Condition. Applicant contends the Judge should have applied this Mitigating Condition because: (a) she has undertaken steps to pay off her delinquent student loans, and (b) she tried to address her delinquent credit card debts but was rebuffed when a bank turned her application for a loan to consolidate her debts, and when her creditors would not accept her offer to make payments toward the delinquent credit card accounts because they wanted larger payments than she could afford. Considering the record evidence as a whole, the Judge was not compelled to conclude that Applicant satisfied this Mitigating Condition because her efforts at dealing with the delinquent credit card accounts were not reasonably calculated to resolve those debts. *Cf.* ISCR Case No. 98-0349 (February 3, 1999) at p. 2 (noting applicant has obligation to deal with financial problems in a responsible and reasonable manner).

3. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. In addition to the arguments discussed earlier in this decision, Applicant contends the Judge's adverse decision is not a common sense one under Section F.3. and Criterion F. In support of this contention, Applicant argues: (a) the Judge should have concluded her conduct was extenuated or mitigated under the Section F.3. factors; (b) she is not financially overextended within the meaning of Criterion F; (c) the amount of her delinquent credit card accounts is not large, and it is less than the amount of her student loans, for which the Judge entered formal findings in favor of her under SOR 3.f. and SOR 3.g.; (d) she is committed to working toward resolving her outstanding debts; and (e) she has always been honest with the

government about her situation. For the reasons that follow, the Board concludes Applicant fails to demonstrate the Judge's adverse decision 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. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). The federal government need not wait until an applicant actually mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such 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 required 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 handling classified information. *See, e.g.*, ISCR Case No. 98-0188 (April 29, 1999) at p. 4.

Under Criterion F, the security eligibility of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties. *See* ISCR Case No. 96-0454 (February 7, 1997) at p. 2. "Furthermore, '[f]inancial difficulties, financial irresponsibility and greed have proven to be significant motivating forces for espionage or attempted espionage. It is clear that the United States must consider whether individuals granted access to classified information are, through financial irresponsibility, greed or financial misfortune, in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.'" ISCR Case No. 95-0611 (May 2, 1996) at pp. 2-3 (quoting earlier Board decision).

Given Applicant's overall history of financial problems, including several delinquent debts that were still unsatisfied as of the hearing date, the Administrative Judge had a rational basis for his doubts about Applicant's current security eligibility. The favorable evidence cited by Applicant does not compel a different result. The Judge must consider the record evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. *See, e.g.*, ISCR Case No. 99-0123 (January 11, 2000) at p. 3. Considering the record as a whole, the Judge did not weigh the record evidence in a manner that is arbitrary, capricious or contrary to law. The Judge's findings and conclusions about Applicant's history of financial problems are supported by substantial record evidence and provide a rational basis for the Judge's adverse security clearance decision.

### **Conclusion**

Applicant has failed to meet her burden on appeal of demonstrating error that warrants remand or reversal. Accordingly, the Board affirms the Administrative Judge's September 27, 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 entered formal findings in favor of Applicant with respect to Criterion B. The Judge's findings and conclusions under Criterion B are not at issue on appeal.
2. "[T]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control."
3. "[A] history of not meeting financial obligations."
4. "[I]nability or unwillingness to satisfy debts."
5. "[T]he behavior was not recent."
6. "[I]t was an isolated incident."
7. "[T]he conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)."
8. "[T]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control."
9. "[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."