

DATE: February 9, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0304

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision, dated October 1, 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 erred by rejecting Applicant's late response to the File of Relevant material and not considering it in making his decision.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated May 7, 1999 to Applicant. The SOR was based on Criterion F (Financial Considerations) and Criterion E (Personal Conduct).

Applicant submitted an answer to the SOR in which he indicated he did not want a hearing in his case. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant. The case was assigned to the Administrative Judge for disposition after Applicant did not submit a response to the FORM in the time period allowed for such a response.

Applicant submitted a response to the FORM by fax eight days after the deadline for such a response had passed. Department Counsel objected to Applicant's late response. The Administrative Judge gave Applicant until September 28, 1999 to show good cause why the Judge should accept Applicant's late response to the FORM. Applicant submitted a September 28, 1999 letter explaining the reasons for his late submission.

The Administrative Judge issued a written decision, dated October 1, 1999. In that decision, the Judge ruled Applicant did not show good cause for his late submission of a response to the FORM and indicated the Judge would not consider Applicant's late response. The Judge then made findings and conclusions about the SOR allegations, entered formal findings against Applicant under Criterion F and Criterion E, and 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 Issue

On appeal, Applicant submitted a one-page letter, dated November 15, 1999, with several documents attached. In the one-page letter, Applicant states "I am submitting an appeal based upon the issues raised in the following pages." The documents attached to the November 15, 1999 letter are essentially identical to Applicant's late response to the FORM, which the Administrative Judge rejected as untimely.

On its face, Applicant's appeal submission fails to challenge the findings and conclusions of the Administrative Judge in the October 1, 1999 decision. Absent any such challenge on appeal, the Board need not review the Judge's findings and conclusions under Criterion F and Criterion E. This is because there is no presumption of error below and the appealing party has the burden of raising and demonstrating error below. *See, e.g.*, ISCR Case No. 98-0751 (July 21, 1999) at p. 2.

Making allowances for Applicant's *pro se* status, the Board will construe Applicant's submission of the documentation rejected by the Administrative Judge as raising the issue of whether the Administrative Judge erred by rejecting Applicant's late response to the FORM and not considering it in making his decision.

The Administrative Judge has the authority to "rule on questions on procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner." Directive, Additional Procedural Guidance, Item 10. Once the Judge was assigned Applicant's case, he had the authority to rule on whether to accept Applicant's late response to the FORM. Parties have no right to simply ignore or fail to comply with deadlines in DOHA proceedings. Failure to meet such deadlines can result in the loss or forfeiture of important rights. Considering all the circumstances, the Judge's decision to reject Applicant's late response to the FORM was not arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's October 1, 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