

DATE: July 12, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0652

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Acting Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge John R. Erck issued a decision dated March 30, 2000 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.

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 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 November 16, 1999. The SOR was based on Criterion J (Criminal Conduct) and Criterion F (Financial Considerations). The Applicant did not request a hearing. The government submitted a File of Relevant Material (FORM), which contained the government's documentary evidence, to the Applicant on January 13, 2000. No response to the FORM was received from Applicant. Subsequently, the Administrative Judge issued a 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.

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 or conclusions below. In a very short appeal brief, she states simply "...I have requested the Internal Revenue Service to assist me in setting up a payment plan so that I may clear up my financial obligation." The Board construes this assertion as arguing the Administrative Judge's decision was arbitrary, capricious and contrary to law.

The Administrative Judge concluded that given Applicant's current financial circumstances it was necessary to deny her

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a security clearance. The Administrative Judge explicitly noted several mitigating acts by Applicant. Nonetheless he concluded that since she does not have the resources to enter a formal agreement with the Internal Revenue Service to repay her \$50,000 tax debt (and her indebtedness to State X) her financial situation has current security significance under Criterion F sufficient to warrant an adverse decision. 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 in the case does not make the Judge's adverse decision 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 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.

Conclusion

Applicant has failed to meet her burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's March 30, 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

1. The Administrative Judge cleared Applicant under Criterion J (Criminal Conduct). The adjudication of that Criterion is not an issue on appeal.