

DATE: July 23, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0051

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey Anderson issued a decision, dated April 18, 2001, in which she 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 issue: whether the Board should review Applicant's security clearance case *de novo* and reverse the Administrative Judge's adverse security clearance decision.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated May 31, 2000 to Applicant. The SOR was based on Guideline E (Personal Conduct), and Guideline B (Foreign Influence).

In responding to the SOR, Applicant asked that the hearing in her case be consolidated with that of her husband's case (ISCR Case No. 00-0050). Applicant's husband submitted an answer to the SOR in ISCR Case No. 00-0050, in which he asked that the hearing in his case be consolidated with Applicant's case. Department Counsel submitted a motion indicating it joined the request to consolidate the hearings for ISCR Case No. 00-0050 and ISCR Case No. 00-0051. On October 17, 2000, the Administrative Judge granted the request for a consolidated hearing. The consolidated hearing was held on November 29, 2000.

The Administrative Judge issued a decision, dated April 18, 2001, in which she 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 that adverse decision.

When the case file was forwarded to the Board, two documents concerning Applicant's case were missing: a copy of the Administrative Judge's decision in ISCR Case No. 00-0051 and Applicant's answer to the SOR in ISCR Case No. 00-0051. The Western Hearing Office provided the Board with a photocopy of the Judge's decision in ISCR Case No. 00-0051.

By letter dated May 24, 2001, Applicant and Department Counsel were informed about the two missing documents and the fact that a photocopy of the Administrative Judge's decision had been provided to the Board by the Hearing Office. In the May 24, 2001 letter, the parties were requested to discuss the matter of the missing answer to the SOR and see if they could agree on a copy of the answer that could be added to the case file. A copy of Applicant's answer to the SOR was submitted with Applicant's appeal brief. Department Counsel did not object to Applicant's submission of that copy of her answer to the SOR.

Appeal Issue⁽¹⁾

On appeal, Applicant does not raise any specific claims of factual or legal error by the Administrative Judge. Applicant's appeal letter states "We submit this appeal with the sincere hope that our plea for Justice will be heard. Our pleadings have been exhaustively summarized in the various documents already submitted by us. Therefore, instead of restating what we have already said many times over, we request that the board review our case with a fresh mind. We have enclosed our responses to the SOR and our exhaustive statements."⁽²⁾ Applicant's appeal essentially asks the Board to review her security clearance case *de novo* and reverse the Judge's adverse security clearance decision.

There is no presumption of error below, and the appealing party has the burden of raising and demonstrating factual or legal error by the Administrative Judge. *See, e.g.*, ISCR Case No. 00-0339 (March 22, 2001) at p. 3. Furthermore, the appealing party must set forth its claims of error with specificity. *See, e.g.*, ISCR Case No. 99-0519 (February 23, 2001) at p. 9. The requirement that the appealing party raise issues with specificity serves some important purposes. First, the appealing party must provide specificity in its claims of error so that the nonappealing party can have a reasonable opportunity to respond to those claims of error, and the Board can discern what the appealing party is claiming to be factual or legal error by the Judge. *See, e.g.*, ISCR Case No. 99-0295 (October 20, 2000) at pp. 3-4. Second, the Board does not review cases *de novo*. Rather, the Board is limited to reviewing a Judge's decision under the terms of the Directive, Additional Procedural Guidance, Item E3.1.32. ("The Appeal Board shall address the material issues *raised by the parties* to determine whether harmful error occurred.")(italics added) *See also* ISCR Case No. 99-0519 (February 23, 2001) at p. 9. If an appealing party fails to make any specific claim of factual or legal error, the Board cannot assume the role of surrogate advocate and search the record below and the Judge's decision to ferret out possible error. Third, the Board cannot engage in reasoned decision-making when carrying out its appellate responsibilities unless the appealing party provides some specificity to its claims of factual or legal error. The Board cannot be expected to guess what an appealing party believes is factual or legal error by the Judge. Fourth, unless the appealing party raises claims of error with some specificity, the Board could waste its time (and prejudice the nonappealing party) by addressing matters that the appealing party may not believe involve error by the Judge.

In this case, Applicant has not made any specific claim of factual or legal error by the Administrative Judge. Appellant's *pro se* status does not relieve her of the obligation to raise specific claims of error. Even though a *pro se* applicant's appeal brief cannot be expected to meet the standards expected of a lawyer's brief, *see* DISCR Case No. 90-0635 (March 26, 1992) at p. 2, a *pro se* applicant's appeal brief must set forth specific claims of error. Furthermore, Applicant asks the Board to conduct *de novo* review of her case, which is not authorized by the Directive.

Conclusion

Applicant has failed to demonstrate the Administrative Judge erred. Accordingly, the Board affirmed the Judge's April 18, 2001 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. Applicant in this case and the applicant in ISCR Case No. 00-0050 submitted a joint appeal brief. Because of procedural differences between the two cases on appeal, the Board is issuing separate decisions for each case.

2. With the one-page appeal letter, Applicant submitted copies of four documents that were part of the record before the Judge: answer to SOR in ISCR Case No. 00-0050; answer to SOR in ISCR Case No. 00-0051; written statement of the applicant in ISCR Case No. 00-0050, dated November 15, 1999; and Applicant's written statement, dated April 7, 2000.