



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 08-11792
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

February 25, 2010

Decision

HARVEY, Mark, Administrative Judge:

In October 1998, Applicant's debts were discharged through Chapter 7 of the Bankruptcy Code. His statement of reasons (SOR) lists eight delinquent debts totaling \$24,543, which were incurred after his bankruptcy. His history of financial problems, combined with his failure to make sufficient effort to resolve four of his delinquent debts, causes security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 5, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) (Item 5). On June 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations) (Item 1). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked (Item 1).

On July 8, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated October 2, 2009, was provided to him, and he was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant did not provide a response to the FORM. The case was assigned to me on February 4, 2010.

Findings of Fact²

In Applicant's response to the SOR, he admitted responsibility for the six debts in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g, and 1.h.³ He also admitted additional delinquent debts were discharged in October 1998 under Chapter 7 of the Bankruptcy Code. He also described his resolution or attempted resolution of the six debts he admitted. He denied the remainder of the delinquent debts. His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor.⁴ He has been an aircraft electrician/mechanic for 25 years (Item 4 at 3). He served in the U.S. Marine Corps from August 1974 to August 1978. When he received his honorable discharge, he was an E-5 (Item 4 at 4). He married his spouse in 1976. His two children were born in 1997 and 1995. He attended college from September 1997 to December 2000. From November 1983 to the present, he was unemployed three times: (1) from August 1997 to February 1998; (2) from January to February 2000; and (3) from November 2001 to January 2002. In 2008, he was deployed to Iraq on behalf of his employer (Item 4 at 4). He has held a security clearance and worked on classified projects for many years (Item 4 at 4).

¹The DOHA transmittal letter is dated October 5, 2009; and Applicant's receipt is dated November 19, 2009 (file). The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information (file). On December 9, 2009, Applicant requested an extension, and DOHA granted an extension until January 18, 2010 (file).

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's July 8, 2009, SOR response (Item 4).

⁴Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's March 5, 2008, SF 86 (Item 5).

Applicant did not disclose any unpaid judgments, unpaid liens, garnishments, illegal drug use, alcohol-related offenses, or felonies on his March 5, 2008, security clearance application. He disclosed that a vehicle was repossessed in August 2006, and that the creditor sought about \$10,000; however, he did not disclose any debts currently delinquent over 90 days, or 180 days delinquent in the last seven years.

Financial Considerations

Applicant's SOR lists eight delinquent debts totaling \$24,543. A detailed description of the status of those debts follows:

SOR ¶¶ 1.a (\$167) and 1.b (\$1,109)—DEBTS MERGED,⁵ BUT UNRESOLVED. These two telecommunications debts related to the same delinquent account. Applicant said he disputed the \$1,109 portion (Item 4 at 1). He offered to pay the creditor \$167 to settle the debt; however, the creditor refused this offer (Item 4 at 1).

SOR ¶ 1.c (\$8,015)—UNRESOLVED. Applicant did not make his car payments as agreed (Item 4 at 1). Although he was discussing the payments with the creditor, the creditor involuntarily repossessed his vehicle (Item 4 at 1). In his March 5, 2008, SF 86, he explained the creditor "was not interested in resolving the problem" (Item 5 at 9). On July 8, 2009, he said that he took responsibility for the debt and promised to make payments when he had resolved his other debts (Item 4 at 1). He did not provide any correspondence with the creditor.

SOR ¶ 1.d (\$1,194)—UNRESOLVED. Applicant admitted responsibility for this debt, and said he has "made arrangements to repay this debt at \$100 per month" (Item 4 at 2). However, he did not indicate he had made any payments. There is insufficient evidence that Applicant has an established payment plan.

SOR ¶ 1.e (\$104)—PAID. Applicant admitted responsibility for this medical debt, and said he paid it on July 2, 2009 (Item 4 at 2). Although he did not provide any documentary evidence establishing this debt was paid, I accept his uncorroborated averment as fact.

SOR ¶ 1.f (\$1,695)—UNRESOLVED. Applicant denied responsibility for this debt and said he had been disputing it for many months (Item 4 at 2). He did not provide the correspondence with the creditor showing the basis of the dispute.

SOR ¶ 1.g (\$42)—PAID. Applicant admitted responsibility for this debt, and said he paid it on November 5, 2008 (Item 4 at 2, 8). He provided correspondence from the creditor, which corroborated his statement of payment (Item 4 at 2).

SOR ¶ 1.h (\$12,217)—RESOLVED. Applicant admitted responsibility for this debt (Item 4 at 2). On January 17, 2009, the creditor accepted Applicant's quit claim

⁵The debt in SOR ¶ 1.a is mitigated as a duplication of the debt in SOR ¶ 1.b.

deed to settle the debt (Item 4 at 9). He provided the quit claim deed to corroborate his statement about resolution (Item 4 at 9).

Applicant's personal financial statement includes the following information: his gross monthly salary is \$8,500;⁶ his monthly net salary is \$6,500; his monthly expenses are \$5,350; his monthly debt payments are \$1,405; and his monthly net remainder is \$45 (Item 6 at 4).

Applicant explained that the 1998 bankruptcy resulted from lack of income while Applicant was in college (Item 6 at 5). Their son was born, and his wife was unable to work outside the home (Item 6 at 5).

On February 16, 2009, Applicant responded to DOHA interrogatories (Item 6 at 2). The DOHA interrogatories asked him to "provide documentation verifying payments, and current status" of the debts in SOR ¶¶ 1.a, 1.c to 1.h, and two other non-SOR debts. He denied knowledge of the two non-SOR debts (Item 6 at 5). He addressed the other SOR debts by sending a letter to the creditors asking for confirmation of the debt and the amount to settle the debt, if confirmed (Item 6 at 11). He explained:

[He] fell into the housing finance trap. We took a bad home loan, foolishly, that really put us over our heads based on the income we were making at that time.⁷ Thus the reason we are, right now, working backwards to resolve old credit issues.

(Item 6 at 5).

Applicant noted that he and his wife have "spent time with financial advisors to help [them] understand and change [their] money management skills." (Item 4 at 3). Their financial management advisor has shown Applicant correct ways to budget (Item 4 at 3).

The FORM at 6 reminded Applicant that additional corroborating documentation was important to resolving security concerns stating:

However, in the absence of additional documentary evidence submitted in response to this FORM to show that Applicant has acted in "good faith" to repay or settle his unresolved debts, as

⁶Applicant provided a pay statement, dated October 3, 2008, indicating his gross pay to date for 2008 was \$114,641 (Item 6 at 12). His gross pay for September 12-25, 2008, was \$8,401 (Item 6 at 12). His pay statement for January 16-29, 2009, was \$6,003 (Item 6 at 13). A substantial part of his income is from overtime.

⁷Applicant's credit report includes a \$290,000 mortgage, which was 120 days past due until it was settled for less than full balance (Item 6 at 8; Item 7 at 6). The foreclosure account was closed in January 2008 (Item 6 at 8; Item 7 at 6). No adverse inference is drawn from this debt because it was not listed on the SOR, and Applicant has not had an adequate opportunity to fully explain the circumstances of this debt's resolution.

represented in his Answer, and to document his utilization of financial counseling, Applicant's overall financial instability remains a lingering concern impacting his eligibility for a security clearance.

Id. (emphasis in original). Applicant did not provide any documentation after he received the FORM.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline F (financial considerations).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) (internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports, his response to DOHA interrogatories, and his SOR response. His debts, including a delinquent car loan and several collection accounts, have been delinquent for a substantial period of time.

Applicant paid two debts (SOR ¶¶ 1.e and 1.f). One debt was a duplication (SOR ¶ 1.a). Another debt was resolved through a quit claim deed (SOR ¶ 1.h). Applicant said

he was starting a payment plan on one debt (SOR 1.d). He said he was disputing two debts (SOR ¶¶ 1.b and 1.f). After he paid his other debts, he planned to start a payment plan on SOR ¶ 1.c. However, he did not provide any supporting documentary evidence of such payments, such as an account statement from the creditor or his bank account statements. There is insufficient evidence of an established payment plan. He did not provide sufficient information about his overall financial situation to establish that he was unable to start payment plans on the debts in SOR ¶¶ 1.c and 1.d.

The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Additional inquiry about the possible applicability of mitigating conditions is required.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of any mitigating conditions because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether Applicant is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by unemployment from August 1997 to February 1998, from January to February 2000, and from November 2001 to January 2002. The first period of unemployment caused his bankruptcy in October 1998. However, he has not been unemployed since January 2002, and has ample income to address his delinquent debts. He has not provided sufficient evidence to establish that he acted responsibly under the circumstances with respect to his unresolved SOR debts. The two income statements he provided appear to indicate that he had income in 2008 of substantially more than \$100,000. He did not prove that he had insufficient income to resolve or at least to establish payment plans for the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.f.⁸

AG ¶ 20(c) partially applies. Applicant and his wife spent time with financial advisors to help them understand and change their money management skills. They learned how to budget. This is sufficient to satisfy the financial counseling requirement. He generated a budget as part of his personal financial statement. Applicant cannot receive full credit under AG ¶ 20(c) because he has not paid, started payment plans, adequately disputed, or otherwise resolved four of his SOR debts. There are some initial, positive "indications that the problem is being resolved or is under control." He has admitted some responsibility for three of the four unresolved SOR debts. Although he may have a payment plan on one debt (SOR ¶ 1.d), he did not provide documentation showing any payments to this creditor. He promised to eventually resolve his debt in SOR ¶ 1.c. He also established some mitigation under AG ¶ 20(d) because he showed some good faith⁹ in the resolution of his SOR debts by admitting responsibility for most of his SOR debts, payment of two SOR debts, resolving his time-share with a quit claim deed, and promising to resolve his delinquent SOR debts.

⁸"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁹The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant said he disputed the debts in SOR ¶¶ 1.b and 1.f. He also thought the creditor in SOR ¶ 1.c treated him unfairly when his vehicle was involuntarily repossessed. However, he did not provide evidence showing he has “a reasonable basis to dispute the legitimacy of [his] past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” AG ¶ 20(e) cannot be applied to mitigate these three debts.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He has had steady employment for more than five years, and he has not shown significant progress on his SOR debts. His steps are simply inadequate to fully mitigate financial considerations security concerns.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant’s clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant is 53 years old. He is sufficiently mature to understand and comply with his security responsibilities. He has been an aircraft electrician/mechanic for 25 years. In 2008, he was deployed to Iraq on behalf of his employer. He has held a security clearance and worked on classified projects for many years. He attended college from September 1997 to December 2000. He married his spouse in 1976. He served in the U.S. Marine Corps from August 1974 to August 1978. When he received his honorable discharge from the Marine Corps, he was an E-5. He deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. There is no evidence that he has ever violated security rules. There is every indication that he is loyal to the United States, the

Department of Defense, and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. He has never been fired from a job or left employment under adverse circumstances. His unemployment from August 1997 to February 1998, from January to February 2000, and from November 2001 to January 2002 contributed to his financial woes. He paid two debts for \$104 and \$42. He resolved his time-share debt using a quit claim deed. One SOR debt is a duplication of another SOR debt. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems. He began to have financial difficulties several years ago during a period of unemployment. In October 1998, his debts were discharged under Chapter 7 of the Bankruptcy Code. In February 2008, he was fully aware of the debts raising security concerns when he responded to DOHA interrogatories, and in July 2009, in his SOR response, he discussed his SOR debts. He had ample notice of his delinquent SOR debts, and sufficient opportunity to contact his creditors. He did not make sufficient progress in the resolution of his SOR debts. He did not pay, start payments, document and justify any disputes, or otherwise resolve four SOR debts. He had sufficient income to make greater progress. I do not accept his statement that he was starting a payment plan on the debt in SOR ¶ 1.d as sufficient to show he has an established payment plan on this debt. His promise to pay the debt in SOR ¶ 1.c is insufficient to mitigate this debt because he has had the income to start a payment plan and has not done so. The FORM provided clear notice to Applicant that additional documentation was essential to show his efforts to resolve several SOR debts; however, he did not provide any documentation in response to the FORM.

In conclusion, Applicant made insufficient progress to resolve his delinquent SOR debts, even though he had steady employment for the last seven years and ample opportunity to contact his SOR creditors and provide documentation. He was on clear notice from his receipt of DOHA interrogatories, and even more so after he received the SOR and the FORM, that he needed to show substantial progress in the resolution of his delinquent SOR debts; however, he did not provide documentation showing his efforts to accomplish this security responsibility.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b to 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g to 1.i:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge