

DATE: September 19, 2000

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0140

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

Administrative Judge Claude R. Heiny issued a decision dated June 28, 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 that follow 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 following issue: Whether the Administrative Judge's decision below is arbitrary, capricious or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant dated April 12, 2000. The SOR was based on Guideline H (Drug Involvement). Applicant responded on April 19, 2000 and declined a hearing. Department Counsel prepared a File of Relevant Material (FORM). A copy of the FORM was sent to Applicant, who was given the opportunity to respond to the FORM. On June 28, 2000, Administrative Judge Claude R. Heiny issued an unfavorable decision. The case is before the Board on Applicant's appeal of that decision.

**Appeal Issue**

Whether the Administrative Judge's decision below is arbitrary, capricious or contrary to law? Applicant does not challenge any specific finding of fact or conclusion of law from the decision below. Rather, Applicant requests additional investigation, argues that he is a trustworthy person, and asserts that denial of a clearance will prohibit him from advancing his career. The Board construes these arguments as alleging that the decision below is arbitrary, capricious and contrary to law.

Applicant makes several requests for the Board to gather additional information. In the first place the Board does not have the authority or the resources to conduct additional investigations. Secondly, the Board is prohibited from considering new evidence on appeal (Item E3.1.29 of the Directive's Additional Procedural Guidance).

Applicant argues that he is a trustworthy person. There is no record evidence, favorable or unfavorable, that specifically deals with Applicant's trustworthiness. There is record evidence concerning Applicant's history of marijuana use. The Administrative Judge concluded that Applicant's history of marijuana use, and initial statement to the government that he might use marijuana again if it was offered to him were not yet mitigated by the passage of time. The Judge's conclusion is not 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 involve predictive judgments about whether a person may be at risk to fail to properly handle classified information *Department of the Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Applicant's overall history of marijuana use provides a rational basis for the Judge's adverse conclusions.

Applicant is concerned that denial of a security clearance will have a negative impact on his career. The impact of a decision on an applicant's career is not a basis for a clearance decision. The Administrative Judge must work within the framework spelled out in the Directive and the impact of a security clearance decision on Applicant's career can not be reasonably considered an adjudicative factor.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Therefore the decision below is affirmed.

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