

DATE: May 9, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0277

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Elizabeth M. Matchinski issued a decision, dated January 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 issue of whether the Administrative Judge erred by finding that Applicant falsified a security questionnaire in March 1999.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated June 23, 2000 to Applicant. The SOR was based on Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). A hearing was held on October 12, 2000.

The Administrative Judge issued a written decision, dated January 18, 2001. The Judge entered a formal finding in favor of Applicant with respect to SOR paragraph 1.a., which concerns a 1993 work-related matter. However, the Administrative Judge found that Applicant falsified a security questionnaire in March 1999 by failing to list: (a) the fact that Applicant was fired from a job in May 1998; and (b) the fact that Applicant had been arrested in January 1995 and charged with reckless endangerment and threatening. Based on those findings the Judge entered formal findings against Applicant with respect to the remaining SOR paragraphs 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' adverse security clearance decision.

Appeal Issue

Applicant's appeal submission contains copies of materials that were made a part of the record evidence during the proceedings below, as well as some new evidence. The Board cannot consider the new evidence submitted by Applicant

on appeal. *See* Directive, Additional Procedural Guidance, Item E3.1.29. The Board will limit its consideration of Applicant's arguments to those that are based on the record evidence.

The Administrative Judge made findings and reached conclusions about the 1993 work-related matter covered by SOR paragraph 1.a. that are favorable to Applicant. The Judge also entered a formal finding in favor of Applicant with respect to SOR paragraph 1.a. The Judge's favorable findings and conclusions about SOR 1.a. render moot Applicant's appeal arguments about the 1993 work-related matter. Furthermore, the Judge's findings and conclusions about the 1993 work-related matter are not relevant to the Judge's findings and conclusions about the falsification allegations in the SOR. Therefore, no useful purpose would be served by addressing Applicant's arguments about the 1993 work-related matter.

Applicant contends the Administrative Judge erred by finding he falsified a security questionnaire in March 1999. Specifically, Applicant argues that he did not falsify the security questionnaire in March 1999 and argues that his omissions were not intended to conceal information or to deceive or mislead the government.

On appeal, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge." Directive, Additional Procedural Guidance, Item E3.1.32.1. The presence of conflicting record evidence does not diminish a Judge's fact-finding responsibility. When the record contains conflicting evidence, the Judge must carefully weigh the evidence in a reasonable, common sense manner and make findings that reflect a reasonable interpretation of the evidence that takes into account all the record evidence. Accordingly, the Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings. *See, e.g.*, ISCR Case No. 99-0205 (October 19, 2000) at p. 2.

There is no dispute that when Applicant completed the security questionnaire in March 1999, he did not disclose the following facts: (a) he had been fired from a job in ay 1998; and (b) he had been arrested in January 1995 and charged with reckless endangerment and threatening. The issue before the Administrative Judge was determining Applicant's intent or state of mind when he did not disclose those facts in response to questions on the security form. In the proceedings below, Applicant provided explanations for why he did not disclose those facts when he completed the security questionnaire. Applicant's explanations are clearly relevant and material information about his intent and state of mind when he completed the security form. However, Applicant's explanations were not binding on the Administrative Judge. Rather, the Judge had the obligation to consider Applicant's explanations in light of the record as a whole. *See, e.g.*, ISCR Case No. 00-0044 (December 22, 2000) at p. 3; ISCR Case No. 99-0194 (February 29, 2000) at p. 3. When considering Applicant's explanations, the Judge had to assess Applicant's credibility. In this case, the Judge considered the record evidence, assessed Applicant's credibility, and explained why she concluded his explanations were not credible. Applicant's appeal arguments do not demonstrate the Judge acted in a manner that is arbitrary, capricious, or contrary to law. Nor do Applicant's arguments persuade the Board that the Judge's negative credibility determination is unreasonable or otherwise unsustainable. Considering the record evidence as a whole, the Judge's findings of falsification are sustainable.

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 are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). The federal government need not wait until an applicant mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See, e.g.*, ISCR Case No. 99-0296 (April 18, 2000) at p. 5. Falsification of a security questionnaire raises questions about an applicant's trustworthiness, reliability, and suitability for access to classified information. *See, e.g.*,

ISCR Case No. 00-0245 (February 16, 2001) at p. 2; ISCR Case No. 99-0260 (April 12, 2000) at p. 3. The Administrative Judge's findings about Applicant's falsification of a security questionnaire in March 1999 provide a rational basis for her adverse conclusions under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct), and her adverse security clearance decision.

Conclusion

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