

DATE: February 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0445

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Jerome H. Silber issued a decision dated November 1, 2001 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 is arbitrary, capricious or contrary to law?

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant dated August 23, 2000. The SOR was predicated on Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). Applicant requested and received a hearing, after which the case was reassigned to a new Administrative Judge. An unfavorable decision was issued by the new Administrative Judge, dated November 1, 2001. Applicant appealed.

Scope of Review

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. See Directive, Additional Procedural Guidance, Item E3.1.32. See, e.g., ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (discussing reasons why party must raise claims of error with specificity).

When an Administrative Judge's factual findings are challenged, 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 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 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.

When a challenge to an Administrative Judge's rulings or conclusions raises a question of law, the Board's scope of review is plenary. *See* DISCR Case No. 87-2107 (September 29, 1992) at pp. 4-5 (citing federal cases).

Appeal Issue

Whether the Administrative Judge's decision is arbitrary, capricious or contrary to law? Applicant makes several assertions, which, when taken together, are best construed as asserting that the Administrative Judge's decision is arbitrary, capricious or contrary to law. The Board finds Applicant's arguments unpersuasive.

Applicant denies deliberately falsifying his security clearance application and his interview with the Defense Security Service (DSS). He admits making mistakes about his criminal record, says he knew that the investigation would reveal all his arrest records, and states that he spent hours with the interviewer trying to make sure everything was correct. Applicant acknowledges an extensive arrest record but believes he is a different person now. Applicant's arguments do not detract from the viability of the Administrative Judge's decision. Given the record evidence, the Administrative Judge had ample room to reach his findings and conclusions. It is well settled that an appealing party's ability to interpret the record in their favor does not demonstrate error on the Administrative Judge's part (*See, e.g.,* ISCR Case No. 00-0489, January 10, 2002, at page 10).

Applicant argues that his answer to question 25 of his security clearance application was truthful because that question only requires listing Military Court actions within the last seven years. Applicant's argument is correct, but it fails to demonstrate the Administrative Judge erred. The Board notes that the SOR did not allege and the Administrative Judge did not find that Applicant had been untruthful in his answer to question 25 of his security clearance application. The SOR alleged, and the Administrative Judge ultimately found, that Applicant had deliberately falsified his answers to questions 24 and 26 of the security clearance application, and that Applicant had failed to fully disclose his criminal record in his April 15, 1999 written statement.

Applicant notes that he volunteered for the US Army, received an honorable discharge, and held a Top Secret clearance. He notes that he needs a clearance to perform a small portion of his job. None of these points demonstrates error by the Administrative Judge.

Finally, Applicant notes the remote location of his employment, which limited the number of character references available to him. Nonetheless he believes that the letters in the record demonstrate his professionalism. Applicant also says he would do nothing to jeopardize the national security. Again, none of the points demonstrate error by the Administrative Judge in his findings and conclusions based on the record evidence. The Judge's findings and conclusions about Applicant's history of alcohol abuse, criminal conduct, and falsification provide a rational basis for the Judge's adverse conclusions about Applicant's security eligibility.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error by the Administrative Judge. 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