

DATE: October 9, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0741

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Elizabeth M. Matchinski issued a decision, dated June 28, 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 issues: (1) whether the Administrative Judge erred by finding Applicant falsified material facts on a security questionnaire completed in November 1998; and (2) whether there is a rational basis for the Administrative Judge's adverse security clearance decision.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated March 5, 2001 to Applicant. The SOR was based on Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

Applicant submitted an answer to the SOR in which he indicated he wanted a decision made without a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant. No response to the FORM was received from Applicant.

The Administrative Judge issued a written decision, dated June 28, 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 the Administrative Judge's adverse security clearance decision.

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 Issues

Applicant's appeal brief contains many factual statements and assertions that go far beyond the record evidence that was before the Administrative Judge. In addition, Applicant submitted a character letter with his appeal brief. Applicant's statements and assertions and the character letter constitute new evidence, which the Board cannot consider. *See* Directive, Additional Procedural Guidance, Item E3.1.29. [\(1\)](#)

1. Whether the Administrative Judge erred by finding Applicant falsified material facts on a security questionnaire completed in November 1998. Apart from the new evidence Applicant offers on appeal (which the Board cannot consider), Applicant makes various arguments that the Board construes as raising the issue of whether the Judge erred by finding Applicant falsified material facts on a security questionnaire completed in November 1998.

In the decision below, the Administrative Judge explained why she found that Applicant had deliberately omitted material facts when he completed a security questionnaire in November 1998. The Judge's finding of falsification reflects a reasonable interpretation of the record evidence. Applicant's disagreement with the Judge's finding of falsification is not sufficient to demonstrate that the Judge's finding is not sustainable.

2. Whether there is a rational basis for the Administrative Judge's adverse security clearance decision. Apart from challenging the Administrative Judge's finding of falsification, Applicant argues: (a) he has never compromised or jeopardized sensitive information that he was worked with during the three years he has been with his current employer; (b) his job performance demonstrates the reliability, credibility, and trustworthiness of his character; (c) his criminal offenses were minor, they occurred during his high school and college years, and he is now "much more mature and conscious of the law now"; and (d) his marijuana use was a thing of the past, he is "a much more responsible adult now," and he would never put himself in a situation involving drugs again. The Board construes these arguments as raising the issue of whether there is a rational basis for the Judge's adverse security clearance decision.

The absence of any evidence that Applicant has compromised or jeopardized sensitive information did not preclude the Administrative Judge from making an adverse security clearance decision. An adverse security clearance can be based on 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. Accordingly, 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).

An applicant's job performance may reflect favorably on the applicant. However, an applicant with good job performance may engage in off-duty conduct that has negative security implications. *See, e.g.*, ISCR Case No. 99-0462 (May 25, 2000) at p. 5. Evidence of an applicant's good job performance does not preclude a Judge from considering the security significance of an applicant's off-duty conduct and circumstances. In this case, Applicant's history of marijuana use and falsification of a security questionnaire have negative security significance that is not negated or reduced by

Applicant's job performance.

Applicant's arguments about his past criminal offenses are moot. The SOR did not allege Applicant's March 1994 and August 1996 alcohol-related incidents under Guideline J, and the Judge discussed those incidents only to the extent they were relevant to the falsification allegation under Guideline E. Furthermore, the Judge entered a formal finding in favor of Applicant with respect to the 1998 criminal incident that was alleged under SOR paragraph 3.a.

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 Administrative Judge explained why she concluded Appellant's history of marijuana use (1991-January 2000), and falsification of the security questionnaire in 1998 warranted adverse formal findings under Guidelines H, E, and J, and an adverse security clearance decision. Considering the record as a whole, the Judge's explanations are not arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to demonstrate error below. Accordingly, the Board affirms the Administrative Judge's June 28, 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 had the opportunity to request a hearing, but elected to have a decision made in his case without a hearing. Furthermore, Applicant did not submit any response to the FORM. Having failed to take advantage of opportunities to present additional evidence for consideration by the Judge in this case, Applicant cannot challenge the Judge's findings and conclusions based on evidence that he did not present during the proceedings below.