

DATE: October 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00062

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 August 19, 2002, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

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 issue: whether the Administrative Judge erred by finding Applicant falsified a personnel security questionnaire. For the reasons that follow, the Board affirms the Administrative Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated February 20, 2002. The SOR was based on Guideline E (Personal Conduct).

Applicant submitted an answer to the SOR in which he indicated he wanted a decision made in his case based on an administrative determination. A File of Relevant Material (FORM) was prepared, and a copy of the FORM was given to Applicant. No response to the FORM was received from Applicant. The case was then assigned to the Administrative Judge for determination.

The Administrative Judge issued a written decision, dated August 19, 2002, 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 Judge's adverse 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 Issue

The Administrative Judge entered formal findings in favor of Applicant with respect to SOR paragraphs 1.a through 1.d, which dealt with past alcohol-related incidents. Those favorable formal findings are not at issue on appeal.

The Administrative Judge found that Applicant falsified a personnel security questionnaire in March 2000 by failing to disclose: (a) alcohol-related incidents in September 1998, August 1984, and June 1984; (b) a November 1996 arrest for destruction of property; and (c) a 1996 repossession of a car. On appeal, Applicant states he did not know the government went back 15 to 20 years to investigate a person, and that he would have disclosed the prior incidents if he had known the government investigation would go that far back in time. The Board construes Applicant's statements as raising the issue of whether the Administrative Judge erred by finding he falsified the personnel security questionnaire.

Applicant's argument lacks merit for two reasons. First, Applicant's argument ignores the simple fact that his omissions included three incidents that occurred within about four years of when he completed the personnel security questionnaire (two incidents that occurred in 1996 and one incident that occurred in 1998). Second, in the decision being appealed, the Administrative Judge specifically noted Applicant's denials of any intent to falsify the personnel security questionnaire and gave a rational explanation for why she rejected those denials, based on admissions Applicant made in a June 2001 written statement he gave to a federal investigator. The Judge's interpretation of the record evidence is reasonable and does not reflect arbitrary or capricious action by her. The record evidence supports the Judge's finding that Applicant falsified the personnel security questionnaire.

Conclusion

Applicant had failed to demonstrate error below. Accordingly, the Board affirms the Administrative Judge's adverse security clearance 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