

DATE: July 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03359

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge John G. Metz, Jr., issued a decision, dated March 6, 2002, 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.

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 a security questionnaire; and (2) whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated July 12, 2001. The SOR was based on Guideline J (Criminal Conduct) and Guideline E (Personal Conduct).

Applicant submitted an answer to the SOR, in which she stated she "would like a decision made without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was provided to Applicant, who was given the opportunity to respond to the FORM and present information for consideration by an Administrative Judge. Applicant submitted a response to the FORM.

The Administrative Judge issued a written decision, dated March 6, 2002, in which he 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 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

The Administrative Judge found the following: (1) In September 1993, Applicant was arrested and charged with third degree theft in connection with a shoplifting incident; (2) Applicant was convicted of the theft charge and fined; (3) In February 1998, Applicant was indicted by a local grand jury of obtaining more than \$7,000 in food stamps and other financial assistance through deception between June 1996 and June 1997; (4) in 1999 Applicant pleaded guilty to a reduced misdemeanor charge of unauthorized possession of food stamps, and was given a one-year suspended sentence, ordered to make restitution, and placed on two years probation (to run to December 2001); (5) Applicant falsified a security questionnaire November 1997 by failing to disclose her arrest and conviction for the shoplifting incident; and (6) Applicant did not falsify the security questionnaire by failing to list a civil lawsuit to which she was a party because her omission was the result of a misunderstanding of the question on the form. ⁽¹⁾

The Administrative Judge concluded the following: (1) Applicant's falsification of the security questionnaire warranted an adverse formal finding under Guideline E; (2) Applicant's falsification of the security questionnaire was a violation of 18 U.S.C. Section 1001; (3) Applicant's convictions in 1993 and 1999, and her violation of 18 U.S.C. Section 1001 warranted an adverse formal finding under Guideline J; and (4) it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

1. Whether the Administrative Judge erred by finding Applicant falsified a security questionnaire. On appeal, Applicant states she remembered the shoplifting case "but was not 100% sure of the time frame," and "I thought the time had exceeded the seven-year allotted time for my obtaining a security clearance." The Board construes Applicant's statements as raising the issue of whether the Judge erred by finding she falsified a security questionnaire by failing to list the 1993 shoplifting incident on the form.

Applicant's statements about her intent or state of mind when she completed the security questionnaire are relevant evidence, but they are not binding on the Administrative Judge. The Judge had to consider and weigh Applicant's statements in light of the record evidence as a whole and make a finding about whether Applicant's failure to disclose the 1993 shoplifting incident on the security questionnaire she completed in November 1997 was deliberate or inadvertent. Considering the record evidence as a whole, it was not arbitrary, capricious, or contrary to law for the Judge to reject Applicant's explanation and find that she deliberately omitted the shoplifting incident from the security questionnaire. *See* Directive, Additional Procedural Guidance, Item E3.1.32.1 (standard of review of factual findings by Administrative Judge).

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. On appeal, Applicant states: (a) the case involving food stamps "has been resolved," with the fine being paid and her probation having ended; (b) the shoplifting case "was somewhat of a mistake of judgment"; and (c) there currently "is no outstanding restitution's or pending fines." ⁽²⁾ The Board construes Applicant's arguments as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Applicant's arguments fail to demonstrate the Administrative Judge's analysis or overall adverse security clearance

decision is 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). In evaluating an applicant's security eligibility, the Administrative Judge must consider the past conduct and present circumstances of an applicant in light of the whole person concept and decide whether an applicant shows the high degree of judgment, reliability, and trustworthiness that must be exhibited by persons granted access to classified information. *See, e.g., Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988). The Judge's findings and conclusions about Applicant's falsification and criminal conduct provide a rational basis for the Judge's adverse conclusions about Applicant's security eligibility and her overall adverse security clearance decision.

Conclusion

The Board affirms the Administrative Judge's adverse security clearance decision because Applicant has failed to demonstrate error below.

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. The Administrative Judge's favorable finding about the SOR paragraph 2.b. allegation is not at issue on appeal.
2. Applicant's appeal brief also offers to provide additional information for consideration by the Board. The Board cannot consider new evidence. Directive, Additional Procedural Guidance, Item E3.1.29.