

DATE: April 15, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-05256

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

William S. Fields, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Darlene Lokey Anderson issued a decision, dated January 10, 2001, [\(U\)](#) 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 deliberately falsified a security questionnaire.

### **Procedural History**

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated July 23, 2001. The SOR was based on Guideline E (Personal Conduct).

Applicant submitted an answer to the SOR in which he requested an administrative determination be made in his case. A File of Relevant Material (FORM) was prepared. A copy of the FORM was provided to Applicant, and he was given the opportunity to respond to the FORM and submit additional information for consideration in his case. No response to the FORM was received from Applicant.

The Administrative Judge issued a written decision 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**

There is no dispute that Applicant did not list a 1975 felony conviction and five other drug-related offenses that occurred in the 1970s when he completed a security questionnaire in April 1999. On appeal, Applicant challenges the Administrative Judge's finding that his failure to disclose those matters was a deliberate falsification. Applicant argues that he did not recall all of his criminal offenses when he completed the security questionnaire and denies that he tried to mislead anyone about his criminal record.

The record evidence shows that Applicant denied any intent to conceal his criminal record or mislead the government about it. Applicant's denials of any intent to falsify are relevant evidence, but they are not conclusive or binding on the Administrative Judge. Rather, the Judge had to consider and weigh Applicant's denials in light of the record evidence as a whole and make a reasonable finding as to whether Applicant falsified material facts when he completed the security questionnaire and failed to disclose a significant portion of his criminal record. *See, e.g.*, ISCR Case No. 00-0044 (December 22, 2000) at p. 3. Considering the record as a whole, there is sufficient evidence to sustain the Judge's finding that Applicant falsified material facts by failing to disclose all of his criminal record on the security questionnaire. Applicant's appeal argument fails to demonstrate the Judge's finding of falsification is arbitrary, capricious, or contrary to law.

### **Conclusion**

Applicant has failed to meet his burden of demonstrating error by the Administrative Judge. Accordingly, the Board affirms the 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

1. Although the Administrative Judge's decision was dated January 10, 2001, a review of the case file indicates the decision was issued on January 10, 2002.