

DATE: August 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06594

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Claude R. Heiny issued a decision, dated April 19, 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 that Applicant falsified a security questionnaire he completed in October 1999; 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 December 26, 2001. The SOR was based on Guideline H (Drug Involvement) and Guideline E (Personal Conduct). A hearing was held on April 5, 2002. The Administrative Judge issued a written decision, 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

1. Whether the Administrative Judge erred by finding that Applicant falsified a security questionnaire he completed in October 1999. The Administrative Judge found that Applicant falsified a security questionnaire he completed in October 1999 by: (a) not listing a January 1998 alcohol-related arrest, a March 1998 alcohol-related arrest, a January 1999 arrest for possession of marijuana, and an April 1999 arrest for possession of marijuana; and (b) failing to disclose that he used marijuana as late as 1993. (1) On appeal, Applicant asserts that he did not deliberately falsify or withhold information, and that his omissions were "due to the hasty manner in which I was instructed to complete the application." Applicant's assertion raises the issue of whether the Judge erred by finding he falsified the security questionnaire.

During the proceedings below, Applicant denied any intent to falsify the security questionnaire. Applicant's denial of any intent to falsify the security questionnaire and his explanation for why he did not disclose certain information on the questionnaire were relevant evidence. However, Applicant's denial of any intent to falsify and his explanation for the omission of certain information were not binding or conclusive on the Administrative Judge. Rather, the Judge had to consider that evidence in light of the record evidence as a whole and his assessment of the credibility of Applicant's testimony.

Considering the record as a whole, the Board concludes the Administrative Judge's finding that Applicant falsified the security questionnaire reflects a reasonable interpretation of the record evidence and is sustainable. *See* Directive, Additional Procedural Guidance, Item E3.1.32.1 (standard of review for Administrative Judge's findings of fact).

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant does not challenge the Administrative Judge's findings of fact about his past involvement with illegal drugs (including incidents where Applicant possessed drugs with the intent to sell them). However, Applicant argues: (a) his involvement with illegal drugs is a thing of the past and will not happen again; (b) he has learned to obey the law and needs to provide a good example for his son; (c) he is honest, trustworthy and reliable; (d) he has learned from his past mistakes, and has paid for them in full; and (e) he would do nothing in the future to jeopardize his job or his son. The Board construes these arguments as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes Applicant's arguments fail to demonstrate the Judge erred.

The Administrative Judge had to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. *See, e.g.*, ISCR Case No. 00-0489 (January 10, 2002) at p. 10. The Judge considered the evidence presented by Applicant and concluded it was not sufficient to overcome the negative security implications of Applicant's past involvement with illegal drugs and his falsification of the security questionnaire. Considering the record as a whole, the Board concludes the Judge did not weigh the record evidence, both favorable and unfavorable, in a manner that is arbitrary, capricious, or contrary to law. Furthermore, the adverse conclusions the Judge drew about Applicant's security eligibility follow rationally from his findings of fact.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980). Applicant's past involvement with illegal drugs (which included his efforts to sell illegal drugs) and his falsification of the security questionnaire provided a rational basis for the Judge's doubts about his judgment, reliability, and trustworthiness. Given the record evidence in this case, it was not arbitrary, capricious, or contrary to law for the Judge to conclude that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Conclusion

Applicant has 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

1. The Administrative Judge found Applicant did not falsify the security questionnaire by not disclosing the fact that he was paying child support pursuant to a court order. The Judge found Applicant's failure to disclose that fact was due to an innocent mistake or misunderstanding. That favorable finding is not at issue on appeal.