

DATE: August 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06852

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision, dated May 8, 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 issue: whether the Administrative Judge erred by finding that Applicant engaged in falsification of his past drug abuse.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated January 8, 2002. The SOR was based on Guideline E (Personal Conduct) and Guideline H (Drug Involvement). A File of Relevant Material (FORM) was prepared and a copy of the FORM was provided to Applicant. After Applicant submitted a response to the FORM, the case was assigned to the Administrative Judge for determination. The Judge issued a written decision, dated May 8, 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 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 made findings about Applicant's past history of drug abuse during the period from about 1971 or 1972 to about 1995, concluded that Applicant's past history of drug abuse was mitigated by the passage of time, and entered a formal finding in favor of Applicant with respect to Guideline H. The Judge's findings and conclusions about Applicant's past drug abuse are not at issue on appeal.

The Administrative Judge found that: (a) Applicant falsified a security questionnaire in August 1998 by denying that he had used illegal drugs within the last seven years; (b) it was not until January 2000 that Applicant disclosed to the government that he had used illegal drugs; and (c) it was not until November 2000 that Applicant divulged to the government the true extent of his past drug abuse. The Judge concluded Applicant's falsification of the security questionnaire demonstrated a lack of candor with the government that warranted an adverse formal finding under Guideline E and an adverse security clearance decision.

On appeal, Applicant argues: (a) he did not falsify the security questionnaire, but rather he only forgot that he had used illegal drugs within seven years of when he completed the questionnaire; (b) he has been as honest and forthcoming as he can with the government about his past drug abuse; (c) he was merely trying to forget about his past drug abuse and move on with his life; and (d) he does not pose a security risk. Applicant's arguments raise the issue of whether the Administrative Judge erred by finding Applicant engaged in falsification of his past drug abuse.

Applicant's appeal arguments are similar to the claims he made in written statements that he gave to investigators in January 2000 and November 2000, that he repeated in his answer to the SOR, and that he reiterated in his response to the FORM. Applicant's denial of any intent to falsify and his explanations for why he did not disclose his past drug abuse when he completed the security questionnaire were relevant and material evidence. However, Applicant's denial of any intent to falsify and his explanations for not disclosing his past drug abuse were not binding on the Administrative Judge. Rather, the Judge had to consider that evidence in light of the record as a whole. Accordingly, the Judge could make findings about Applicant's intent or state of mind that run contrary to Applicant's statements if such findings have a rational basis in the record evidence. *See, e.g.*, ISCR Case No. 00-0601 (September 21, 2001) at pp. 2-3. Considering the record as a whole, the Judge's finding that Applicant engaged in falsification reflects a reasonable interpretation of the record evidence and is sustainable. *See* Directive, Additional Procedural Guidance, Additional Procedural Guidance, Item E3.1.32.1 (standard of review for factual findings).

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). Security requirements include consideration of a person's judgment, reliability, and trustworthiness. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). The federal government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 239-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). All that is required is 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. *See, e.g.*, ISCR Case No. 00-0601 (September 21, 2001) at p. 3.

Falsification of a security questionnaire constitutes misconduct that casts serious doubts on an applicant's judgment, reliability, or trustworthiness. Furthermore, such falsification provides a rational basis for an adverse security clearance decision. *See Harrison v. McNamara*, 228 F. Supp. 406, 408 (D. Conn. 1964)(lying on application for government

position requiring a security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965).

The Administrative Judge's finding that Applicant falsified a security questionnaire by denying any past involvement with illegal drugs provides a rational basis for the Judge's adverse security clearance decision.

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