

DATE: June 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07735

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Roger C. Wesley issued a decision, dated March 15, 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 raises the following issue: whether the Administrative Judge's adverse security clearance decision should be reversed because the Judge failed to give due consideration to the favorable evidence presented by Applicant.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated October 6, 2001. The SOR was based on Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

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 Guideline G and Guideline H. Those favorable formal findings are not at issue on appeal. Therefore, the Board need not discuss the Judge's findings and conclusions about Applicant's past history of alcohol and drug abuse except to the extent they are pertinent to the issue raised on appeal.

The Administrative Judge found that Applicant engaged in knowing and willful falsification by: (1) not disclosing his past drug abuse when he completed a security questionnaire in August 1999; and (2) made false and misleading statements about the nature and extent of his past involvement with marijuana in a written statement he gave to an investigator in January 2001.⁽¹⁾ The Judge concluded: (a) Applicant's falsifications constitute criminal conduct because they are a violation of 18 U.S.C. Section 1001; (b) Applicant's falsifications raise serious doubts as to his judgment, reliability, and trustworthiness; and (c) Applicant's falsifications warrant an adverse security clearance decision.

On appeal, Applicant does not challenge the Administrative Judge's findings about falsification. However, Applicant argues the Judge should have found Applicant's falsifications were extenuated and mitigated in light of (i) Applicant's age and maturity at the time of the falsifications, (ii) Applicant's motivation for the falsifications, (iii) the presence of pertinent changes in Applicant's behavior since the falsifications, and (iv) the evidence which shows that Applicant is not likely to repeat such falsifications. For the reasons that follow, the Board concludes Applicant has failed to demonstrate the Judge erred.

Under the whole person concept, an Administrative Judge must consider all the record evidence, both favorable and unfavorable, in assessing an applicant's security eligibility. *See* Directive, Section 6.3; Directive, Enclosure 2, Items E2.2.1 and E2.2.3. The mere presence of favorable record evidence does not compel a Judge to render a favorable security clearance decision. Rather, a Judge must consider and weigh such evidence in light of the record 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. Accordingly, Applicant's ability to cite to favorable record evidence does not demonstrate the Judge erred.

A reading of the decision below shows the Administrative Judge considered the favorable evidence presented by Applicant and took it into account when evaluating the security significance of Applicant's falsifications. The ability of Applicant to argue that the Judge should have given more weight to that favorable evidence is not sufficient to demonstrate the Judge weighed the record evidence as a whole in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 01-08390 (February 12, 2002) at p. 4. Considering the record evidence as a whole, the Board concludes it was not arbitrary, capricious, or contrary to law for the Judge to conclude Applicant's falsifications were not extenuated or mitigated.

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). 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, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Falsification of a security questionnaire or a written statement given to an investigator conducting a background investigation constitutes misconduct that casts serious doubts on an applicant's judgment, reliability, and 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 findings about Applicant's falsifications in August 1999 and January 2001 provide 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

1. However, the Administrative Judge found Applicant did not engage in falsification when he did not list a 1996 underage possession of alcohol offense in a security questionnaire he completed in August 1999. That favorable finding is not at issue on appeal.