

DATE: January 24, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09874

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Wilford H. Ross issued a decision dated September 26, 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.

The Board has jurisdiction on appeal under Executive Order 10865 and Department of defense directive 5220.6 (Directive) issued January 2, 1992, as amended.

Applicant's appeal presents the issues: 1. Whether the Administrative Judge's findings that Applicant knowingly and wilfully falsified his security clearance application are supported by the record evidence; and 2. Whether the Administrative Judge's conclusion that Applicant's falsifications are unmitigated is arbitrary, capricious or contrary to law. For the reasons that follow, the Board affirms the Judge's decision.

### **Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant dated May 21, 2002. The SOR was based on Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). Applicant declined a hearing. The Administrative Judge issued a decision based on a File of Relevant Material. The Judge found for Applicant under Guideline H and against Applicant under Guidelines E and J. Applicant's appeal of the unfavorable findings is before the Board.

### **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 also* 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 the same record. 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 <sup>(1)</sup>

1. Whether the Administrative Judge's findings that Applicant knowingly and wilfully falsified his security clearance application are supported by the record evidence. On appeal Applicant challenges the Administrative Judge's findings that Applicant knowingly and willfully falsified his security clearance application. There is sufficient record evidence to support the Judge's findings that Applicant intentionally gave false answers to two questions on the application. The Board has previously noted that a Judge may find falsification even in the face of an applicant's denial of any intent to falsify. *See* ISCR Case No. 01-02871 (January 8, 2003) at p. 3. Applicant's ability to interpret the evidence in a manner favorable to himself does not demonstrate that the Judge erred.

2. Whether the Administrative Judge's conclusion that Applicant's falsifications are unmitigated is arbitrary, capricious or contrary to law. Applicant argues on appeal that he is an asset to the Department of Defense and has earned significant endorsement from important Defense officials. The Board construes Applicant's arguments as raising the question of whether the Administrative Judge's conclusion that Applicant's falsifications are unmitigated is arbitrary, capricious or contrary to law.

Applicant's professional accomplishments do not refute or mitigate the conduct that formed the basis for the Administrative Judge's adverse conclusions. Applicant's job performance is not dispositive on the question of whether Applicant's falsifications reflect adversely on his trustworthiness and reliability to the extent that he is not eligible for a security clearance. It was not error for the Judge to conclude that Applicant's professional accomplishments fail to mitigate Applicant's falsifications.

Applicant points to endorsements he received from career Defense Department officials. The Administrative Judge specifically noted those endorsements and said he considered them. Nonetheless, the Judge concluded Applicant's falsifications were unmitigated. The Administrative Judge is responsible for weighing the record evidence, both favorable and unfavorable. Absent a showing that the Judge acted in a manner that is arbitrary or capricious, the Board will not disturb the Judge's weighing of the evidence. Applicant has failed to demonstrate that the Judge weighed the cited evidence in a manner that was arbitrary or capricious. Applicant has not demonstrated error by the Administrative Judge.

### Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error in the Administrative Judge's September 26, 2002 decision. Therefore, the Board affirms the Judge's 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 entered formal findings in favor of Applicant with respect to SOR paragraphs 1.a through 1.f, 2.c through 2.f, and 3.a. Those favorable formal findings are not at issue on appeal.