

DATE: November 25, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-11501

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Elizabeth M. Matchinski issued a decision, dated August 15, 2002, 2002, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

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 engaged in deliberate falsification; and (2) whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board affirms the Administrative Judge's decision.

### **Procedural History**

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated February 14, 2002. The SOR was based on Guideline H (Drug Involvement), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

Applicant submitted an answer to the SOR, in which she indicated she did not want a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant, who submitted a response to the FORM.

The case was assigned to the Administrative Judge for determination after receipt of Applicant's response to the FORM. The Judge issued a written decision, dated August 15, 2002, 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 Issues**

1. Whether the Administrative Judge erred by finding that Applicant engaged in deliberate falsification. The Administrative Judge found that: (a) Applicant had used marijuana, with varying frequency, from 1992 through 1999; (b) Applicant helped her live-in boyfriend with his sales of illegal drugs on various occasions from 1994 to 1998; (c) Applicant falsified a security clearance questionnaire in September 1999 by failing to disclose a 1994 arrest for assault, and failing to disclose her involvement with illegal drugs; (d) Applicant falsified a written statement she gave to an investigator in April 2000 by denying that she had ever been involved with illegal drugs; and (e) Applicant falsified a written statement she gave to an investigator in July 2000 by denying that she had ever been involved with her boyfriend's sale of illegal drugs.

On appeal, Applicant does not challenge the Administrative Judge's findings about her drug use, or her involvement with her boyfriend's sales of illegal drugs. However, Applicant does argue: (i) she did not understand the significance of the security clearance application; (ii) she did not deliberately omit her 1994 arrest from the security questionnaire, but merely forgot about it; (iii) she was concerned about losing her job if she disclosed her past drug use; and (iv) she cooperated with the investigators and provided them with more information than was asked for on the security clearance application. The Board construes Applicant's arguments as raising the issue of whether the Judge erred by finding Applicant engaged in deliberate falsification.

The Administrative Judge's findings of deliberate falsification are amply supported by the record evidence in this case, including written admissions by Applicant that she had deliberately concealed her criminal conduct and involvement with illegal drugs. Applicant's desire to protect her job in no way made her falsifications any less deliberate or dishonest. Furthermore, given the record evidence in this case, the Judge had ample evidence to find that Applicant was not honest and forthcoming with the investigators who interviewed her and took written statements from her in April 2000 and July 2000. The Judge's findings that Applicant engaged in deliberate falsifications in September 1999, April 2000, and July 2000 are sustainable. *See* Directive, Additional Procedural Guidance, Item E3.1.32.1.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant also argues: (a) she now realizes her failure to disclose her past drug use was a mistake; (b) she has learned from her mistake and has been completely honest with the government since then; (c) she has reformed, is drug-free and will never use drugs again; (d) she no longer associates with people involved with drugs; and (e) her job performance and the favorable character evidence submitted on her behalf should be considered in her favor. 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.

Applicant's arguments do not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. The Judge considered Applicant's explanations for her conduct, as well as the favorable evidence submitted by Applicant, and explained why they were not sufficient overcome the negative implications of Applicant's history of involvement with illegal drugs and her multiple acts of deliberate falsification. Furthermore, the Judge weighed the evidence of Applicant's misconduct and the evidence Applicant presented in support of her claim of reform and

rehabilitation. The Judge had to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. Considering the record as a whole, it was not arbitrary, capricious, or contrary to law for the Judge to conclude the favorable evidence presented by Applicant did not overcome the unfavorable record evidence of her history of involvement with illegal drugs and her multiple acts of falsification.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Applicant's history of involvement with illegal drugs and her multiple acts of deliberate falsification provide a rational basis for the Administrative Judge's adverse conclusions about Applicant's judgement and reliability. Considering the record evidence as a whole, the Judge's adverse security clearance decision is not arbitrary, capricious, or contrary to law.

### **Conclusion**

Applicant has failed to demonstrate error below. Therefore, 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