

DATE: August 7, 2002

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12737

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Administrative Judge Roger C. Wesley issued a decision, dated April 12, 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 Applicant falsified a security questionnaire in September 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 E (Personal Conduct) and Guideline J (Criminal Conduct).

A hearing was held on March 7, 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 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**

The Administrative Judge entered a formal finding in favor of Appellant with respect to Guideline J (Criminal Conduct). That favorable formal finding is not at issue on appeal.

1. Whether the Administrative Judge erred by finding Applicant falsified a security questionnaire in September 1999. The Administrative Judge found that Applicant falsified a security questionnaire in September 1999, as alleged in the SOR. On appeal, Applicant makes arguments concerning his answers to questions 24, 28, and 30 on the security questionnaire that the Board construes as raising the issue of whether the Judge erred by finding Applicant falsified the security questionnaire.

There is ample basis in the record below for the Administrative Judge's finding that Applicant falsified the security questionnaire. In a written statement Applicant gave to an investigator in September 2000 (Government Exhibit 2), Applicant admitted he did not disclose his past drug use on the security questionnaire because he was concerned that it would adversely affect his job. Furthermore, at the hearing, Applicant testified that he understood the questions of the security questionnaire and omitted material information from the questionnaire because he was afraid that disclosing such information would result in adverse consequences for him (Hearing Transcript at pp. 23-24, 39, 42-44).

Apart from the Administrative Judge's findings about Applicant's falsification of the security questionnaire, the Judge also found that during a March 2000 interview with an investigator Applicant falsely denied any past use of illegal drugs. That finding has not been challenged by Applicant on appeal.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant also: (a) states the Judge's adverse decision "was a devastating blow to both me and my employer"; (b) points to favorable character evidence and favorable evidence of his job performance that was submitted to the Administrative Judge; (c) asks that he not be judged based on "just the one time I made a mistake while filling out a SF86"; (d) refers to his years of military service; (e) notes the absence of any security violations while he has worked for a defense contractor; and (f) requests the Board reverse the Judge's adverse decision so he can "continue to serve our country." The Board construes these statements, collectively, as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes Applicant's arguments fail to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law.

The adverse effect that an unfavorable security clearance decision may have on Applicant or his employer is not relevant to the adjudication of Applicant's security eligibility. An applicant is not made more or less suitable (in terms of judgment, reliability, or trustworthiness) for a security clearance based on how a security clearance decision might affect the applicant or others. *See, e.g.*, ISCR Case No. 99-0480 (February 14, 2001) at p. 2.

The favorable evidence cited by Applicant on appeal did not preclude the Administrative Judge from making an adverse security clearance decision. The 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. 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.

The absence of security violations by Applicant did not require the Administrative Judge to make a favorable security clearance decision. 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). 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.

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). Falsification of a security questionnaire, making false oral statements to an investigator, or falsification of a written statement given to an investigator constitutes misconduct that cast 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 falsification of the security questionnaire in September 1999 and Applicant's making false statements to an investigator in March 2000 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