

DATE: March 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13653

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Elizabeth M. Matchinski issued a decision, dated November 6, 2002, in which she concluded that it is not clearly consistent with the national interest to grant or continue a clearance for Applicant. Applicant appealed.

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

Applicant's appeal presents the following issue: Whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law. For the reasons set forth below, the Board affirms the Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of reasons (SOR) dated May 21, 2002. The SOR was based on Guideline F (Financial Considerations), Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). Department Counsel requested a hearing which was held on September 11, 2002. Subsequently, the Administrative Judge issued a decision in which she concluded that is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

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 Issue⁽¹⁾

Whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law.

Applicant's brief describes his recollection of the circumstances of his continued indebtedness, his multiple falsifications and his 1998 arrest. The Board construes Applicant's brief as arguing that the Administrative Judge's decision was arbitrary, capricious or contrary to law.

Applicant's brief offers an alternative interpretation of the incidents and circumstances which the Administrative Judge found disqualifying in Applicant's case. Merely offering an alternative interpretation of the facts is not sufficient to demonstrate that the Judge erred. Applicant would have to demonstrate either that the Judge's findings of fact were not based on substantial record evidence, or that her conclusions did not follow reasonably from the findings of fact.

To the extent that Applicant's brief challenges the Administrative Judge's findings of falsification, it fails to demonstrate the Judge erred. Applicant's denials of any intent to falsify were relevant and material evidence, but they were not binding on the Judge. Rather, the Judge had to consider Applicant's denials in light of her assessment of Applicant's credibility and the record evidence as a whole. Considering the record evidence as a whole, the Judge's findings that Applicant engaged in acts of deliberate falsification are sustainable.

Applicant argues on appeal that several instances of his disqualifying conduct were isolated, unique or are unlikely to be repeated. The Administrative Judge is mandated to consider and analyze the whole person. Thus, the Judge could not legitimately apply a piecemeal analysis of Applicant's conduct.

Given the Administrative Judge's sustainable findings of falsification, and the Judge's unchallenged findings about Applicant's history of recurring financial difficulties (which were still largely unresolved as of the date of the hearing), the Judge had a rational basis for drawing adverse conclusions about Applicant's security eligibility under Guidelines E and F. Furthermore, the Judge's adverse conclusions under Guidelines E and F provide a rational basis for her overall adverse security clearance decision.

Conclusion

Applicant has failed to demonstrate that the Judge erred. The Administrative Judge's November 6, 2002 decision is affirmed.

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's formal findings in favor of Applicant with respect to SOR subparagraphs 1.e, 1.p, 2.a, and 3.e are not at issue on appeal.