

DATE: June 24, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-17936

## **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 March 20, 2002, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. For the reasons set forth below the Board affirms the Administrative Judge's decision.

The 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 issue of whether the Administrative Judge's decision is arbitrary, capricious or contrary to law.

#### **Procedural History**

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) dated October 12, 2001. The SOR was based on Guideline E (Personal Conduct) and Guideline J (Criminal Conduct).

Applicant declined a hearing. The Administrative Judge issued an opinion based on the administrative record consisting of a File of a Relevant Material (FORM). The Administrative Judge's decision, dated March 20, 2002, was unfavorable. The case is before the Board on Applicant's appeal of that decision.

Applicant submitted two appeal briefs. The Board rejected the second brief on the grounds that there was not good cause for the second brief.

#### **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**

Whether the Administrative Judge's decision is arbitrary, capricious or contrary to law? Applicant appeal brief appears to contest a key finding of fact by the Administrative Judge and the conclusions that follow from that finding. <sup>(1)</sup> The Administrative Judge found that Applicant deliberately concealed the extent of his sixteen years of frequent marijuana on two security clearance applications that he signed in 1998. (On one form he appears to acknowledge using marijuana four times and on the other form he appears to acknowledge using marijuana twice.) Applicant says on appeal that he misunderstood the question concerning drug use. Applicant's assertion of misunderstanding also was raised below. The Administrative Judge noted 1) the unambiguous nature of the drug use question; 2) Applicant's acknowledgment that his answer "was not the complete truth" and 3) Applicant's statement that "I don't know why I only listed use of marijuana those four times...." The Administrative Judge then concluded that Applicant's false statements in response to the drug use question were deliberate. The Board concludes that the Administrative Judge's findings and conclusions on this issue were reasonable in light of the record evidence.

Applicant also asserts he does not pose a security risk. The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Deliberate falsification of a security questionnaire raises serious questions about an applicant's security eligibility. The Administrative Judge's findings and conclusions about Applicant's falsification of the security questionnaire provide a rational basis for her adverse security clearance decision.

Applicant has not demonstrated that the Administrative Judge's decision was arbitrary, capricious or contrary to law.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Therefore the Administrative Judge's 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. Applicant's brief contains some assertions that go beyond the record evidence. The Board is not permitted to consider new evidence on appeal. See, Directive, Additional Procedural Guidance, Item E3.1.29.