

DATE: October 29, 2002

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19879

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

Administrative Judge Darlene Lokey Anderson issued a decision, dated June 13, 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 ignored evidence submitted by Applicant or failed to give due weight to such evidence; and (2) whether the Administrative Judge erred by concluding Applicant's history of marijuana use demonstrated poor judgment, unreliability, and untrustworthiness that warranted an adverse security clearance decision. 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 January 7, 2002. The SOR was based on Guideline H (Drug Involvement). A hearing was held on April 17, 2002. The Administrative Judge issued a decision, dated June 13, 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 ignored evidence submitted by Applicant or failed to give due weight to such evidence. On appeal, Applicant states the Administrative Judge's decision "does not contain a single reference to the evidence which I submitted as Exhibit E . . . [and] [t]herefore, one must conclude that she inadvertently ignored this information."

There is a rebuttable presumption that an Administrative Judge considered all the record evidence unless the Judge specifically stated otherwise. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at p. 2. Furthermore, there is no legal requirement that a Judge specifically cite and discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 98-0809 (August 19, 1999) at p. 6. Accordingly, the absence of any discussion of Exhibit E in the Judge's decision is not enough to overcome the rebuttable presumption that the Judge considered all the record evidence.

Applicant also cites Exhibit E and other record evidence to support his related contention that his contributions to defense programs show it is in the national interest to grant him a security clearance, and that the Administrative Judge failed to give that evidence due consideration in making her security clearance decision. Applicant's contention fails to demonstrate the Judge erred.

Applicant's technical expertise and contribution to defense programs do not have the significance in these proceedings that Applicant places on them. The 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). Security requirements include consideration of an applicant's judgment, reliability, and trustworthiness. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 887 (1961). An applicant's technical expertise (or lack thereof) is not a measure of whether the applicant demonstrates the high degree of judgment, reliability, and trustworthiness that must be possessed by persons entrusted with classified information. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at pp. 7-8. In deciding whether to grant or continue access to classified information, the government must consider whether an applicant's conduct and circumstances pose a risk of deliberate or inadvertent disclosure of classified information. *See, e.g.*, *Cole v. Young*, 351 U.S. 536, 550 (1956). An applicant's technical expertise and contribution to defense programs do not make the applicant less likely to deliberately or inadvertently disclose classified information; an applicant's lack of technical expertise and absence of any contribution to defense programs do not make the applicant more likely to deliberately or inadvertently disclose classified information.

A history of illegal drug use raises security concerns. *See, e.g.*, *AFGE Local 1533 v. Cheney*, 944 F.2d 503, 506 n.6 (9th Cir. 1991)(discussing some of the ways that use of illegal drugs can pose a security risk). Those security concerns are not increased or decreased by an applicant's level of technical expertise or contribution to defense programs. Accordingly, the Administrative Judge was not required to conclude the evidence of Applicant's technical expertise and contribution to defense programs extenuated or mitigated the security concerns raised by his long history of marijuana use.

Applicant's appeal brief also refers to the adverse consequences that an unfavorable security clearance decision would have on him and his company. The adverse effect that an unfavorable security clearance might have on Applicant or his company 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. 01-12737 (August 7, 2002) at p. 3.

2. Whether the Administrative Judge erred by concluding Applicant's history of marijuana use demonstrated poor judgment, unreliability, and untrustworthiness that warranted an adverse security clearance decision. Applicant does not

dispute the Administrative Judge's findings concerning his use of marijuana during 1965-1975, 1979-1980, the early 1990s to 1994, and mid-1996 to April 2000. However, Applicant argues: (a) his history of marijuana use provides "one example of poor judgment on my part"; and (b) the evidence he presented during the proceedings below demonstrates reliability and trustworthiness that mitigates his marijuana use.

Given Applicant's history of intermittent marijuana use over a period of many years (spanning the ages of 18 and 53), it is untenable for him to characterize it as "one example of poor judgment." Applicant's overall marijuana use demonstrates an intermittent but recurring pattern of poor judgment on many occasions, not merely "one example of poor judgment." Applicant points to his 25 months free of marijuana use and argues it is compelling evidence in his favor. However, the record evidence shows that Applicant has previously returned to marijuana use after longer respites. Therefore, his argument is unpersuasive.

Applicant's overall history of marijuana use over a period of many years provides a rational basis for the Administrative Judge's adverse conclusions about Applicant's suitability for a security clearance. None of the favorable evidence cited by Applicant justifies or excuses his history of marijuana use. As the trier of fact, the Administrative Judge could weigh the favorable evidence presented by Applicant and consider whether it mitigated his long history of marijuana use. Considering the record as a whole, it was well within the bounds of the Judge's discretion to conclude that the favorable evidence presented by Applicant did not mitigate his overall history of marijuana use. *See, e.g.*, ISCR Case No. 01-06594 (August 7, 2002) at p. 3 (Judge must weigh the record evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*).

### **Conclusion**

Applicant has failed to demonstrate the Administrative Judge erred. Accordingly, the Board affirms the 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