

DATE: June 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24030

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Applicant has appealed the March 3, 2003 decision of Administrative Judge Darlene Lokey Anderson, in which the Judge concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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 issue of whether the Administrative Judge erred by finding that Applicant deliberately falsified a security questionnaire. 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 July 1, 2002. The SOR was based on Guideline E (Personal Conduct). Applicant submitted an answer to the SOR, in which he requested an administrative determination in lieu of a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant. Applicant filed a response to the FORM. The case then was assigned to the Administrative Judge for disposition. The Judge issued a written decision, 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 Administrative 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 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. 99-025 (October 19, 2000) at p. 2.

When a challenge to an Administrative Judge's ruling 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 erred by finding that Applicant deliberately falsified a security questionnaire. There is no dispute that Applicant did not list the 1988 revocation of his security clearance when he completed a security questionnaire in February 2001. On appeal, Applicant challenges the Administrative Judge's finding that his failure to disclose the revocation was a deliberate falsification. Applicant argues that he did not know in 2001 that his security clearance had been suspended in 1988. Applicant argues that he was not aware of two documents, received by him from DOHA since February 2001, which revoked his security clearance and that there is no signature proof of his acknowledging receipt of these documents prior to 2001. Applicant states that he has made these documents part of his official records for future reference and can assure that "this unfortunate incident will not happen again." Additionally, Applicant states: he did not deliberately omit, conceal or falsify material facts; there is no record of or recency of this conduct; and he had no motivation or reason to make false statements on the security questionnaire.

The record evidence shows that Applicant denied any intent to mislead the government about his security clearance history. Applicant's denials of any intent to falsify are relevant evidence, but they are not conclusive or binding on the Administrative Judge. Rather, the Judge had to consider and weigh Applicant's denials in light of the record evidence as a whole and make a reasonable finding as to whether Applicant falsified material facts when he completed the security questionnaire and failed to acknowledge a past revocation of his security clearance. *See, e.g.*, ISCR Case No. 00-0044 (December 22, 2000) at p. 3. The Administrative Judge noted Applicant's explanation of having changed duty stations from Italy to New York (the record states this was in September 1988) and that he did not receive documents that were sent to him in Italy in 1988. The Administrative Judge also noted documentation in the record addressed to Applicant that revoked Applicant's security clearance on February 5, 1988. Considering the record as a whole, there is sufficient evidence to sustain the Judge's finding that Applicant falsified material facts on the security questionnaire by failing to disclose a revocation of his security clearance in 1988. Applicant's appeal arguments fail to demonstrate that the Judge erred by finding that Applicant deliberately falsified a security questionnaire.

Conclusion

Applicant has failed to meet his burden of demonstrating error by the Administrative Judge. 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: Christine M. Kopocis

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Administrative Judge

Member, Appeal Board