

DATE: May 23, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24318

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 February 13, 2003, 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 issue of whether the Administrative Judge's adverse decision below is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board affirms the Administrative Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) dated February 6, 2002. The SOR was based on Guideline J (Criminal Conduct), Guideline E (Personal Conduct), Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations).

In his original written response to the SOR on March 20, 2002, Applicant asked for an administrative decision without a hearing. Applicant changed his mind and on September 27, 2002, requested a hearing before a DOHA Administrative Judge. A hearing held on November 7, 2002. The Administrative Judge issued a decision dated February 13, 2003, 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 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

The Administrative Judge entered a formal finding in favor of Applicant with regard to Guideline F (Financial Considerations). This formal finding is not at issue on appeal. Therefore, the Board need not discuss the Judge's finding and conclusion regarding Guideline F.

On appeal, Applicant does not challenge the Judge's findings and conclusions. His argument is that he feels he deserves another chance because he has changed his lifestyle for the better and can control his drinking. In his appeal, Applicant also asks to be given an interim clearance and volunteers to undergo random drug tests. He notes the financial hardship he will undergo if he loses his job due to lack of a security clearance. We interpret Applicant's arguments as raising the issue of whether the Judge's decision below was arbitrary, capricious, or contrary to law.

There is adequate basis in the record below for the Administrative Judge's adverse findings and conclusions with regard to Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline G (Alcohol Consumption). The Judge properly noted that Applicant had the burden of presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by Applicant or proven by Department Counsel. *See* Directive, Additional Procedural Guidance, Item E3.1.15. The Judge discussed the favorable evidence presented by Applicant, but concluded it was insufficient to overcome the evidence presented against him. Considering the record evidence as a whole, the Judge's conclusion is not arbitrary, capricious, or contrary to law.

Neither an Administrative Judge nor this Board has the authority to grant a conditional or interim security clearance or to require Applicant to undergo random drug testing. *See* ISCR Case No. 99-0109 (March 1, 2000) at p. 3. Furthermore, it is irrelevant that the Administrative Judge's adverse decision will result in financial hardship for Applicant. The effect of an adverse decision on Applicant does not change his suitability for a security clearance. *See* ISCR Case No. 98-0743 (October 15, 1999) at p. 3.

The Administrative Judge's findings about Applicant's past criminal record, falsification, and alcohol consumption have not been challenged on appeal, and they provide a rational basis for the Judge's adverse conclusions about Applicant's security eligibility.

Conclusion

Applicant has not met his burden on appeal of demonstrating error below. Therefore, the decision below 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: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board