

DATE: July 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24365

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Applicant has appealed the April 30, 2003 decision of Administrative Judge Robert Robinson Gales, 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 following issue: whether the Administrative Judge erred by concluding Applicant had failed to demonstrate an intent to not use marijuana in the future sufficient to warrant a favorable security clearance decision. For the reasons that follow, the Board affirms the Administrative Judge's adverse security clearance decision.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated October 15, 2002. The SOR was based on Guideline H (Drug Involvement) and Guideline J (Criminal Conduct).

Applicant submitted an answer to the SOR, in which he stated he did not want a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant, who submitted a response to the FORM. The case was then assigned to the Administrative Judge for determination.

The Administrative Judge issued a written decision, dated April 30, 2003, in which he 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

On appeal, Applicant: (a) states that "[a] great deal of attention" has been paid to statements he made during his interview with an investigator, it "was demeaning" to be questioned by the investigator, and his statements to the investigator "turned into a self-inflicted wound"; and (b) presents a graph showing the data on the frequency of his marijuana use during the period 1971-2002 from the interview and argues that it indicates he will not use marijuana in the future.

(a) There is no presumption of error below and the appealing party must raise claims of factual or legal error with specificity. To the extent the appealing party fails to challenge an Administrative Judge's findings or conclusions, the Board need not address them. Even making allowances for Applicant's *pro se* status, his statements about his interview and remarks to the investigator fail to raise any claim of factual or legal error by the Administrative Judge. Accordingly, the Board need not discuss any further Applicant's appeal statements on this aspect of the case.

(b) The Board construes Applicant's second argument as raising the issue of whether the Administrative Judge erred by concluding Applicant had failed to demonstrate an intent to not use marijuana in the future sufficient to warrant a favorable security clearance decision.

Given the Administrative Judge's unchallenged findings about Applicant's overall history of marijuana use, the Judge had a sufficient basis for expressing a doubt as to whether Applicant had a sufficient track record to demonstrate an intent to not use marijuana in the future. Given that expressed doubt, the Judge had a legally permissible basis for making an unfavorable security clearance decision. *See* Directive, Enclosure 2, Item E2.2.2. Applicant's second appeal argument does not demonstrate the Judge committed factual or legal error.

Conclusion

Applicant has failed to demonstrate error below. 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: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board