

DATE: June 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25380

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Applicant has appealed the March 25, 2003 decision of Administrative Judge Roger E. Willmeth, 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's adverse security clearance decision 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 issued to Applicant a Statement of Reasons (SOR) dated August 27, 2002. The SOR was based on Guideline E (Personal Conduct). A hearing was held on December 19, 2002. The Administrative Judge issued a written decision, dated March 25, 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

The Administrative Judge found that: (1) Applicant falsified material facts on a security clearance application he executed in April 1987 by failing to disclosing his use of marijuana while attending high school in 1978, and his receipt of nonjudicial punishment in the Navy in August 1979 for possession of marijuana; and (2) Applicant falsified material facts on a security clearance application he executed in May 2000 by failing to disclose a November 1999 drug-related charge.

On appeal, Applicant does not challenge the Judge's findings of falsification. However, Applicant states: (a) he has been a good citizen since he got out of the Navy in 1982; (b) he has a long work history without having a problem; (c) he regrets his falsifications; (d) he understands now that he must be honest on all matters; and (e) he will do the right thing if he is given another chance.⁽¹⁾ The Board construes Applicant's statements as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

The federal 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). Acts of falsification raise serious questions about an applicant's judgment, reliability, and trustworthiness, and provide a rational basis for making an adverse security clearance decision. *See, e.g.*, ISCR Case No. 01-07735 (June 25, 2002) at p. 3. The Judge's unchallenged findings of fact provide a rational basis for the Judge's adverse conclusions about Applicant's security eligibility, and provide an adequate basis for the Judge's adverse security clearance decision. Applicant's appeal arguments fail to demonstrate the Judge's adverse decision is arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to demonstrate error below. Therefore, 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: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

1. Attached to Applicant's appeal brief is a resume that he asks the Board to consider. The resume includes information that goes beyond the information Applicant presented during the proceedings below. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29.