

DATE: March 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02231

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 November 14, 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.

The Board has jurisdiction under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive) dated January 2, 1992, as amended.

Applicant's appeal presents the issue: Whether the Administrative Judge's findings of fact concerning Applicant's falsifications are reasonably supported by the record evidence.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, dated February 14, 2002. The SOR was based Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). Applicant did not request a hearing. A File of Relevant Material (FORM) dated May 15, 2002, was sent to the Administrative Judge. Applicant did not submit a response to the FORM. The Administrative Judge issued an adverse decision dated November 14, 2002. Applicant appealed.

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⁽¹⁾

Whether the Administrative Judge's findings of fact concerning Applicant's falsifications are reasonably supported by the record evidence. Applicant challenges several findings of fact from the Administrative Judge's decision regarding his false answers to arrest and financial questions on security clearance applications. Applicant's brief seeks to introduce new evidence on appeal, which the Board cannot consider (See Directive, Additional Procedural Guidance, Item E3.1.29).

Applicant's explanation on appeal for his false answers regarding arrests fails to show the Administrative Judge's findings are erroneous. For one false answer, Applicant cites his claim in the record that he erred regarding the date of an arrest. Applicant's claim was evidence the Administrative Judge had to consider but was not binding upon her. Applicant cites a seven-year time limitation to explain his omission of one arrest. However, the specific arrest he omitted was an alcohol-related arrest and was correctly alleged in the SOR and found against Applicant as a false answer to a question with no time limits. Applicant also failed to list several arrests for domestic violence on two security clearance applications. He claims he did not list those arrests because he was not taken into custody and therefore did not think he had been arrested. While the Administrative Judge was required to consider this explanation, she was not required as a matter of law to accept it. Applicant has failed to demonstrate that the Judge erred with regard to any findings of falsification on Applicant's responses to arrest-related questions.

Applicant does demonstrate that the Administrative Judge erred by finding falsification with regard to a financial question where he had provided pertinent information about a dismissal of his Chapter 13 bankruptcy case in a continuation section of the questionnaire. Thus, the Judge's finding that Applicant failed to list that his Chapter 13 bankruptcy had been dismissed is not sustainable. However, the error is harmless when viewed in the context of the case as a whole. The Judge's other sustainable findings of falsification and her unchallenged findings concerning Applicant's history of financial difficulties support her conclusion that it is not clearly consistent with the national interest to grant or continue a clearance for Applicant.

Conclusion

Applicant has failed to demonstrate harmful error on appeal. The Administrative Judge's November 14, 2002 decision 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: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

1. The Administrative Judge made formal findings against Applicant under the Financial Considerations Guideline (Guideline F). Those formal findings are not challenged on appeal.