

DATE: November 27, 1996

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 95-0918

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

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Chief Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Darlene Lokey Anderson issued a decision, dated August 9, 1996, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992.

Applicant's appeal presents the following issues: (1) whether the Administrative Judge erred by finding Applicant made deliberate falsifications; and (2) whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated December 15, 1995 to Applicant. The SOR was based on Criterion N (drug abuse), Criterion O (knowing and willful falsification), Criterion H (criminal conduct), and Criterion I (poor judgment, unreliability, or untrustworthiness).

Applicant submitted an answer to the SOR, in which he indicated he did not want to have a hearing in his case. Department Counsel prepared a File of Relevant aterial (FORM). Applicant did not submit a response to the FORM. The case was then assigned to the Administrative Judge to make a decision.

The Administrative 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 that adverse decision.

Appeal Issues

1. Whether the Administrative Judge erred by finding Applicant made deliberate falsifications. The Administrative Judge found: (a) Applicant falsified a National Agency Questionnaire (NAQ) in December 1994 by falsely stating that he had used marijuana a few times in February 1979 and falsely denying that he had ever purchased any illegal drug; (b) Applicant falsified a written statement he gave to a government investigator in June 1995 by stating he had not used marijuana since summer 1993; and (c) Applicant did not engage in falsification during an October 1995 interview with a government investigator. On appeal, Applicant does not challenge the Judge's finding about the December 1994 NAQ falsification. Although Applicant specifically challenges the Judge's finding that he falsified a June 1995 written statement, it is not clear whether Applicant also challenges the Judge's finding about the alleged October 1995 falsification. For purposes of resolving this appeal, the Board assumes Applicant is challenging both of those findings.

On appeal, the Board reviews the Administrative Judge's challenged factual findings to determine whether they "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 32.a. Under that standard, the Judge's finding of falsification in June 1995 is sustainable.

Given the totality of Applicant's admissions about his drug abuse (FORM, Items 3, 5 and 6) and Applicant's prior falsification of the NAQ in December 1994, the Administrative Judge had a sufficient basis to find Applicant falsified the June 1995 written statement when he stated he last used marijuana in summer 1993. Applicant's appeal argument fails to demonstrate the Judge's finding is in error. Furthermore, the Judge's favorable finding concerning the October 1995 interview renders moot any concern Applicant has about that alleged falsification.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. On appeal, Applicant states: (a) he regrets his past conduct; (b) he told the truth to the investigator in June 1995; (c) he did not have any criminal intent to cover up his past; he just did not fully understand the implications of his conduct; (d) he has completed a drug treatment program and has put his past lifestyle behind him; (e) he has an excellent work record; and (f) if give a chance, he could provide references from co-workers and customers. The Board construes these statements as raising the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

Applicant had an opportunity to respond to the FORM and submit additional information for the Administrative Judge to consider. Applicant failed to take advantage of that opportunity and did not submit a response to the FORM. It is too late for Applicant to offer submission of additional information on his behalf at this time. Furthermore, Applicant's appeal brief contains some factual assertions about matters that go beyond the record below. Those assertions constitute new evidence, which the Board cannot consider. Directive, Additional Procedural Guidance, Item 29.

As discussed earlier, the Administrative Judge's findings about falsification are sustainable. The record evidence in this case provides the Judge with a rational basis to enter formal findings against Applicant under Criteria O, H, and I based on Applicant's falsifications in December 1994 and June 1995. Furthermore, those adverse formal findings provide a rational and legally permissible basis for the Judge's adverse security clearance decision.

The United States 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). Security requirements include consideration of a person's honesty. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). *See also Harrison v. McNamara*, 228 F.Supp. 406, 408 (D. Conn. 1964)(lying on application for government position requiring a security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965). The Administrative Judge reasonably could conclude that Applicant's knowing and willful falsifications in December 1994 and June 1995 raised serious doubts about his security eligibility that are sufficient to warrant an adverse security clearance decision.

The fact Applicant underwent treatment for his drug abuse weighs in his favor under Criterion N (which the Administrative Judge found in his favor). However, Applicant's treatment for drug abuse does not factually or legally preclude the Judge from making an adverse security clearance based on Applicant's knowing and willful falsifications.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Administrative Judge's August 9, 1996 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 entered formal findings for Applicant under Criterion N (drug abuse). Accordingly, the Judge's findings and conclusions about Applicant's drug abuse are not at issue on appeal.