

DATE: February 3, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance  
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ISCR Case No. 96-0162

**APPEAL BOARD DECISION**

Appearances

FOR GOVERNMENT

Carla Conover, Esq.

Department Counsel

FOR APPLICANT

*Pro se*

Administrative Judge John R. Erck issued a decision, dated September 25, 1996, in which he 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, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge erred by finding that Applicant engaged in knowing and willful falsification of his drug history.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated March 13, 1996 to Applicant. The SOR was based on Criterion H (drug involvement), Criterion E (personal conduct), and Criterion J (criminal conduct).

Applicant submitted an answer to the SOR, in which he requested that his case be decided without a hearing. Department Counsel prepared a File of Relevant aterial (FORM), a copy of which was provided to Applicant. Applicant did not submit a response to the FORM.

The case was assigned to an Administrative Judge for consideration. The Judge issued a written decision 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 that adverse decision.

**Appeal Issue** [\(1\)](#)

The Administrative Judge found that Applicant falsified material facts about his involvement with drugs when he executed a National Agency Questionnaire (NAQ) in February 1995 and gave a written statement to the Defense Investigative Service (DIS) in September 1995. On appeal, Applicant contends the Judge's findings of falsification are in error and argues that he provided all information about his drug history to the government to the best of his ability.

The Board notes that Applicant's appeal brief contains some statements about the circumstances surrounding the September 1995 and January 1996 DIS interviews that go beyond the record below. Those statements constitute new evidence that the Board cannot consider. *See* Directive, Additional Procedural Guidance, Item 29. The Board will consider Applicant's arguments only to the extent they relate to matters that are reflected in the record evidence. <sup>(2)</sup>

On appeal, the Board must determine whether an Administrative Judge's factual findings "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." Directive, Additional Procedural Guidance, Item 32.a. Considering the record as a whole, the Board concludes the Judge had sufficient evidence to find that Applicant falsified his February 1995 NAQ and his September 1995 written statement. Given Applicant's admissions in written statements he gave in September 1995 and January 1996, the Judge had a rational basis to conclude Applicant sought to conceal the full extent of his drug history when he executed the NAQ in February 1995 and gave a written statement to DIS in September 1995. Applicant's appeal arguments fail to demonstrate the Judge's findings of falsification are arbitrary, capricious, or contrary to law.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's September 25, 1996 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

1. Applicant's appeal brief specifically states that it "is not with respect to the [Administrative Judge's] Findings of Fact with regard to [Applicant's] involvement with controlled substances." Accordingly the Board need not address the Judge's findings about Applicant's drug history.

2. Applicant had an opportunity to respond to the FORM and submit information for consideration by the Administrative Judge, but did not do so. Having failed to respond to the FORM, Applicant waived his right to submit additional information for consideration in his case.

