

DATE: December 3, 1996

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0119

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Chief Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Roger C. Wesley issued a decision, dated September 10, 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'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 March 22, 1996 to Applicant. The SOR was based on Criterion H (drug involvement).

A hearing was held on June 12, 1996. The Administrative Judge subsequently issued a written decision in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance from Applicant. The case is before the Board on Applicant's appeal from that adverse decision.

Administrative Judge's Findings and Conclusions

Applicant used marijuana on a regular basis from fall 1987 to November 1994 and purchased and sold marijuana on a regular basis during the same period. He stopped using and selling marijuana in November 1994.

Analyzing the evidence under the Directive, the Administrative Judge concluded Applicant's long period of regular marijuana use and regular sales of marijuana for profit required a longer period of reform before a favorable security

clearance decision could be warranted.

Appeal Issue

Applicant does not challenge the Administrative Judge's findings about his history of drug involvement. However, Applicant argues: (a) he has no criminal record; (b) the information about his history of involvement with marijuana was voluntarily provided by him; (c) he is a born-again Christian, has matured since 1994, and will never get involved with marijuana again; and (d) the favorable information in the record supports a favorable security clearance decision in his case. The Board construes Applicant's arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

The absence of a criminal record is not dispositive. Even in the absence of any criminal record, the Administrative Judge reasonably could consider the record evidence of Applicant's history of regular marijuana use and his sales of marijuana for profit and conclude that evidence reflected adversely on Applicant's security eligibility. *See AFGE Local 1533 v. Cheney*, 944 F.2d 503, 506 n.6 (9th Cir. 1991)(discussing several ways that involvement with illegal drugs poses security risk). Also, the fact Applicant provided the information about his past drug history did not preclude the Judge from considering the security significance of Applicant's admitted drug misconduct. *See, e.g., ISCR Case No. 95-0731* (September 13, 1996) at p. 3 ("An applicant's honesty does not immunize the applicant's conduct from review for its security significance.").

There is a rebuttable presumption that the Administrative Judge considered all the record evidence unless he specifically stated otherwise. Nothing in Applicant's appeal brief persuades the Board that he has successfully rebutted that presumption. To the contrary, a reading of the Judge's decision shows he specifically considered the favorable evidence (including Applicant's increased maturity and desire not to return to drug involvement) presented by Applicant during the proceedings below. Merely because the Judge found that favorable evidence to be insufficient at this time to overcome the negative implications of Applicant's 7-year history of marijuana involvement (including marijuana sales for profit) does not demonstrate the Judge failed to consider that evidence.

The Administrative Judge evaluated Applicant's conduct under the Adjudicative Guidelines of Criterion H (drug involvement) and Section F.3. of the Directive. The Judge concluded the negative implications of Applicant's long-term involvement with marijuana was not sufficiently overcome by the favorable evidence presented by Applicant. Absent action that is arbitrary, capricious, or contrary to law, the Board will not disturb a Judge's weighing of the evidence. Applicant's appeal brief fails to persuade the Board that the Judge acted in an arbitrary or capricious manner when he evaluated the record evidence in this case.

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). Based on Applicant's long history of marijuana involvement, the Administrative Judge had doubts about Applicant's security eligibility. The Judge acted properly by resolving those doubts in favor of the national security. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's September 10, 1996 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

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Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board