

DATE: April 29, 1997

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0104

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

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FOR APPLICANT

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Administrative Judge Paul J. Mason issued a decision, dated January 22, 1997, 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 (DoD) Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated April 5, 1996 to Applicant. The SOR was based on Criterion H (Drug Involvement) and Criterion E (Personal Conduct).

A hearing was held on August 7, 1996. The Administrative Judge subsequently issued a written decision in which he concluded that it is not consistent with the national interest to grant or continue a security clearance for Applicant. The case is now before the Board on Applicant's appeal from that adverse decision.

Appeal Issue⁽¹⁾

Applicant does not challenge the Administrative Judge's findings about his history of marijuana abuse and his falsifications about his drug abuse history. Applicant does take issue with the Judge's ultimate conclusion that in light of all the circumstances presented by the case record, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant makes the following arguments in support of his appeal: (1) he was advised by his Navy recruiter to always deny he ever used drugs; (2) there is no evidence in the record that Applicant ever breached the national security; (3) there is no evidence in the record that Applicant's marijuana use hampered or adversely affected his work performance or reliability; (4) Applicant's candid admissions of the

government's allegations reflect maturity; (5) no evidence was presented to show that Applicant was informed by his employer of a policy against drug use; and (6) Applicant has not used any non-prescribed drugs since December 1995. The Board construes Applicant's arguments as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

The United States must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snapp v. United States*, 444 U.S. 507, 511 n. 6 (1980). Falsification of information during investigations to determine security clearance eligibility conflicts fundamentally with this requirement. The Administrative Judge considered the advice given to Applicant by his military recruiter and indicated that it may have mitigated the giving of false information had there been no additional falsification after 1986. The Judge was unwilling to go further however, stating that the desire to perpetuate a false picture cannot qualify as a justification for lying to the government. The Judge's rejection of the notion that the Applicant's interaction with the recruiter mitigated all of Applicant's subsequent falsifications was a reasoned application of the Adjudicative Guidelines to the evidence of record.

The Government need not wait until an applicant actually commits a security violation before it can deny or revoke that applicant's access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1037 (1970). The absence of any security violations by Applicant does not preclude an adverse security clearance decision based on other security-significant conduct, such as a history of marijuana abuse and falsification. Furthermore, security clearance decisions are not limited to consideration of an applicant's job performance or his conduct during duty hours. *See, e.g.*, DOHA Case No. 96-0031 (December 30, 1996) at p. 3. The fact that Applicant did not use marijuana on the job and the fact that his use did not affect his job performance do not make the Judge's conclusion that the marijuana use was disqualifying arbitrary or capricious.

Applicant points to his forthrightness in admitting the allegations brought by the government as a sign of his maturity. Even assuming the correctness of Applicant's premise that his actions in responding to the government's case show maturity, Applicant can claim no benefit from his belated admissions. DOHA hearings are civil proceedings. The procedural rules that apply to civil cases in general also apply to DOHA hearings. Those rules require that applicants respond to the allegations in the Statement of Reasons accurately and truthfully. The fact that Applicant eventually admitted the full extent of his drug use and his earlier falsifications does not render his behavior any less significant for purposes of determining his eligibility for a security clearance.

Applicant states that there was no evidence presented by the government to show that he was ever told by any defense contractor about a non-drug use policy. Demonstrating that an Applicant had specific knowledge of a company policy against drugs is not a prerequisite to establishing the security significance of the illegal use of drugs. Moreover, the record evidence indicates that Applicant was aware at the time he first applied for an industrial security clearance that it was improper for him to use drugs (Hearing transcript at pp. 26-27).

Lastly, Applicant points out that he has not used illegal drugs since December 1995 to support his contention that he should be allowed to keep his security clearance. While Applicant's recent avoidance of illegal substances arguably mitigates his drug abuse conduct to some degree, the Administrative Judge is responsible for considering the nature and seriousness of an applicant's conduct and evaluating it in light of the record evidence as a whole, including any mitigating factors. *Cf. Carosella v. U.S. Postal Service*, 816 F.2d 638, 643 (Fed. Cir. 1987)(agency has discretion to balance the seriousness of employee's misconduct against any applicable mitigating factors). A review of the record as a whole establishes that it was not arbitrary or capricious for the Judge to conclude Applicant's use of marijuana with varying frequency over the period 1976-1995 raised serious concerns about Applicant's security eligibility. It was reasonable for the Judge to conclude that those concerns were not diminished by Applicant's relatively brief period of abstinence. Absent a showing that the Judge acted in a manner that is arbitrary, capricious, or contrary to law, the Judge's weighing of the evidence will not be disturbed on appeal.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's 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. The Administrative Judge entered formal findings for Applicant with respect to some of the SOR allegations under Criterion H (Drug Involvement). Those favorable formal findings are not at issue on appeal.