

DATE: April 3, 1997

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0228

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 December 31, 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, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated May 1, 1996 to Applicant. The SOR was based on Criterion H (Drug Involvement), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct).

A hearing was held on September 19, 1996. The Administrative Judge subsequently 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 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: (a) his history of drug abuse (primarily the purchase and use of marijuana and methamphetamine); and (b) his falsification of material facts about his drug abuse history when he executed Personnel Security Questionnaires in September 1986 and February 1990, and during a ⁽²⁾

December 1986 interview with a Special Agent of the Defense Investigative Service (DIS). However, Applicant argues: (1) he is a Vietnam veteran who received an honorable discharge; (2) he has a stable and favorable employment record; (3) he helped to support his mother until her death in 1996; (4) he is very close to his two children; (5) he immediately took remedial steps after his July 1993 arrest and had his record cleared of the charge; (6) he has learned his lesson concerning illegal drugs and will not be involved with such drugs in the future; (7) he is not vulnerable to coercion or pressure based on his July 1993 arrest; and (8) in order to be granted a security clearance, he is willing to receive additional drug counseling, submit to random drug testing, and meet at any time with a DIS Special Agent. 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. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Applicant's long history of drug abuse (marijuana use from 1966-November 1995 and methamphetamine use from 1967 to July 1993) raises serious questions about his security eligibility. See Directive, Adjudicative Guidelines, Drug Involvement. See also *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). Moreover, Applicant's repeated falsifications about his drug history also raise serious questions about his judgment, reliability, and trustworthiness. See Directive, Adjudicative Guidelines, Personal Conduct. 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 (1991). See also *Harrison v. McNamara*, 228 F.Supp. 406, 408 (D. Conn. 1964) (lying on application for government position requiring security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965). Accordingly, the Administrative Judge's findings about Applicant's history of drug abuse and falsifications provide a rational basis for her conclusions under Criteria H, E, and J, as well as her adverse security clearance decision.

The favorable matters cited by Applicant on appeal do not demonstrate the Administrative Judge erred. There is a rebuttable presumption that the Judge considered all the evidence unless the Judge specifically states otherwise. See, e.g., ISCR Case No. 95-0285 (February 15, 1996) at p. 4. Moreover, the Judge has the discretion to weigh the evidence and balance the favorable and unfavorable evidence. Cf. *Carosella v. U.S. Postal Service*, 812 F.2d 638, 643 (Fed. Cir. 1987) (agency has discretion to balance seriousness of employee's conduct against applicable mitigating factors). Nothing in Applicant's brief persuades the Board to conclude that the Judge failed to consider the record evidence as a whole, or that the Judge weighed the evidence in this case in a manner that was arbitrary, capricious, or contrary to law.

Finally, Applicant's offer to receive additional drug counseling and submit to random drug testing cannot be accepted. There is no authority under the Directive to grant or continue a security clearance on a conditional or probationary basis. See, e.g., DOHA Case No. 96-0152 (January 14, 1997) at p. 5.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's December 31, 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

1. Attached to Applicant's appeal brief are copies of several documents, some of which are duplicates of documents in the record and others that are new evidence. The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item 29.
2. The Administrative Judge entered formal findings for Applicant with respect to some of the SOR allegations. Those favorable formal findings are not at issue on appeal.