

DATE: May 20, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0404

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Paul J. Mason issued a decision, dated February 4, 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 Directive 5220.6 (Directive), dated January 2, 1992, as amended.

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

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 12, 1996 (later redated to August 22, 1996) to Applicant. The SOR was based on Criterion J (Criminal Conduct) and Criterion E (Personal Conduct).

Applicant submitted an answer to the SOR, in which he indicated that he did not want a hearing. A File of Relevant Material (FORM) was prepared and a copy given to Applicant, who did not submit any response to the FORM. The case was then assigned to an Administrative Judge for determination.

The Administrative 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 now before the Board on Applicant's appeal from that adverse decision.

Appeal Issue

The Administrative Judge made findings of fact about Applicant's history of criminal conduct (including theft of funds from a Navy recreation center between early 1986 and December 1987, failure to file state income tax returns for tax years 1993 and 1994) and his knowing and willful falsification of material facts in November 1987, June 1988, August 1995 when he falsely denied to federal investigators his involvement with the theft of the recreation center funds. On appeal, Applicant does not challenge the Judge's factual findings. Rather, Applicant argues: (a) his theft of the recreation center funds was due to his gambling addiction; (b) he has since filed his state income tax returns for 1993 and 1994; (c) his falsifications were due to fear of the consequences if he told the truth; and (d) he poses no threat to the national security. The Board construes Applicant's arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.⁽¹⁾

The government has a compelling interest in protecting classified information, *Department of Navy v. Egan*, 484 U.S. 518, 527 (1988), and 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, judgment, and sense of his obligations. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Moreover, the government need not wait until an applicant mishandles or fails to safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1970), *cert. denied*, 397 U.S. 1039 (1970). Even in the absence of security violations, the government can deny or revoke an applicant's access to classified information based on conduct or circumstances that raise substantial questions about that applicant's judgment, reliability, or suitability for access to classified information.

The Administrative Judge's adverse conclusions about Applicant's security eligibility follow rationally from his findings about Applicant's history of criminal conduct and his repeated acts of knowing and willful falsification. The arguments raised by Applicant on appeal do not demonstrate that the Judge's decision is arbitrary, capricious, or contrary to law.

Applicant's "gambling addiction" does not extenuate or mitigate his theft of recreation center funds for purposes of evaluating his security eligibility. Given Applicant's willingness to steal money entrusted to him to support his "gambling addiction," the Administrative Judge had a rational basis to question Applicant's judgment, reliability, and suitability to properly handle and safeguard classified information. Similarly, given Applicant's willingness to falsify material facts to federal investigators on three separate occasions, the Judge had a rational basis to conclude Applicant demonstrated poor judgment and unreliability. Taken in their entirety, Applicant's actions provide an ample basis for the Judge's adverse security clearance decision.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's February 4, 1997 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 second argument is based on a statement about a matter outside the record before the Administrative Judge in this case. The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item 29. Furthermore, the Judge cannot be found to have made an error based on a statement that was not in the record before him.