

DATE: July 7, 1997

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0582

**APPEAL BOARD DECISION**

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Chief Department Counsel

FOR APPLICANT

*Pro se*

Administrative Judge Paul J. Mason issued a decision, dated March 31, 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 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 August 19, 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 January 28, 1997. The Administrative Judge later 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**

The Administrative Judge made findings about Applicant's history of drug abuse and concluded Applicant's history of cocaine abuse (1988-November 1995) warranted formal findings against Applicant under Criterion H. [\(1\)](#) The Judge also found that Applicant deliberately falsified information about his drug abuse history on three separate occasions

(December 1994, August 1995 and February 1996) and concluded those falsifications warranted formal findings against Applicant under Criteria E and J. The Judge concluded Applicant's cocaine abuse and deliberate falsifications were not sufficiently mitigated by the favorable evidence of Applicant's recent positive changes in his lifestyle to warrant a favorable security clearance decision.

Applicant does not challenge the Administrative Judge's findings about his cocaine abuse history or his falsifications. However, Applicant states: (a) he "made some bad choices" in the past; (b) he got help for his drug problem; (c) he has "had a great deal of rehabilitation"; and (d) he poses no threat to himself, his company, or the government. The Board construes Applicant's arguments as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Applicant's history of cocaine abuse during the period 1988-November 1995 and his deliberate falsifications in December 1994, August 1995 and February 1996 provide a rational basis for the Administrative Judge's negative conclusions about Applicant's security eligibility. A history of drug abuse can be grounds for denying or revoking a security clearance. *See Directive, Adjudicative Guidelines, Drug Involvement. See also AFG 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). Similarly, deliberate falsifications made in connection with a security clearance application or during a security clearance investigation raise questions about an applicant's judgment, reliability, and trustworthiness. *See Directive, Adjudicative Guidelines, Personal Conduct. See also Harrison v. McNamara*, 228 F. Supp. 406, 408 (D. Conn. 1964) (lying on application for government position requiring a security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965).

The favorable evidence cited by Applicant on appeal does not demonstrate the Administrative Judge committed error. The Judge specifically noted the favorable evidence presented by Applicant and concluded it was insufficient to outweigh the negative implications of Applicant's history of cocaine abuse and his deliberate falsifications. The Judge's analysis of the favorable and unfavorable evidence was consistent with the "whole person" concept of the Directive and the requirement of Section F.3. to evaluate the overall facts and circumstances of an applicant's case. *See also Carosella v. U.S. Postal Service*, 816 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 appeal brief persuades the Board that the Judge acted in an arbitrary or capricious manner or contrary to law in weighing the favorable and unfavorable evidence in this case.

### **Conclusion**

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

1. The Administrative Judge made formal findings in favor of Applicant with respect to the SOR paragraphs pertaining to Applicant's involvement with drugs other than cocaine. Those favorable formal findings are not at issue on appeal.

