

DATE: May 23, 1997

\_\_\_\_\_  
In Re:

-----  
SSN: -----

Applicant for Security Clearance  
\_\_\_\_\_

ISCR Case No. 96-0590

**APPEAL BOARD DECISION**

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter

Chief Department Counsel

FOR APPLICANT

*Pro se*

Administrative Judge Joseph Testan issued a decision, dated February 14, 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 that adverse decision. 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 conclusions were arbitrary, capricious or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) dated August 23, 1996. The SOR was predicated upon Criterion H (Drug Involvement), Criterion E (Personal Conduct) and Criterion J (Criminal Conduct). Applicant submitted a response to the SOR in which he requested a hearing. A hearing was held on January 31, 1997. The Administrative Judge issued an unfavorable decision on February 14, 1997. The case is before the Board on appeal from that adverse decision.

**Appeal Issues**

Applicant does not contest any of the Administrative Judge's findings of fact. He does contest the Administrative Judge's conclusions. We construe his appeal as asserting that the Administrative Judge's conclusions were arbitrary, capricious or contrary to law.

Applicant asserts that the Administrative Judge should have applied Drug Involvement mitigating factors and found Applicant's drug use both not frequent and not recent. Given the record, including Applicant's admissions of the use of

multiple drugs at varying frequencies from 1983 to 1996, the Administrative Judge had sufficient reason to conclude that the cited mitigating factors were not applicable.

Applicant also asserts that his abstinence since 1996 constitutes a demonstrated intent not to use drugs in the future. While a period of abstinence is potentially mitigating evidence, there is other record evidence which formed an adequate basis for the Administrative Judge's adverse conclusions, including Applicant's lengthy drug history (including drug use after counseling) and Applicant's earlier official statement that he could not make an unequivocal commitment to forswear drugs.

Applicant asserts that the Administrative Judge's conclusion that Applicant might neglect or otherwise fail to abide by security regulations as a result of drug use is incorrect. In support of this assertion, Applicant cites his unblemished security record. It is well established that security clearance determinations are not just based on performance during duty hours and that even off-duty drug use is significant conduct for purposes of security clearance adjudications. *See, e.g.,* DOHA Case No. 96-0104 (April 29, 1997) at p.3. Additionally, the Federal Government need not wait until an applicant actually mishandles or fails to safeguard properly classified information before it can deny or revoke that person's access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-9 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).

The Administrative Judge found that Applicant has a history of falsifying statements about his drug use, including six occasions over several years where he lied, either on forms or in interviews with government investigators. Applicant believes this history is mitigated by Applicant's decision to correct those falsifications. Applicant believes that his decision constituted a positive step to reduce Applicant's exposure to coercion. Several falsifications over several years is a sufficient record for the Administrative Judge to base a conclusion that "Applicant cannot be relied upon to be

truthful with the Government." Applicant's record of multiple falsifications over several years supports the Administrative Judge's adverse conclusions under both Criterion E and Criterion J.

None of the issues raised by Applicant demonstrate error by the Administrative Judge. There is no basis to conclude that the Administrative Judge's decision was arbitrary, capricious, or contrary to law.

### **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