

DATE: July 22, 1997

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0609

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter

Chief Department Counsel

FOR APPLICANT

Pro se

Administrative Judge John R. Erck issued a decision, dated April 15, 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 30, 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 February 6, 1997. The Administrative Judge issued an unfavorable decision on April 15, 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 specific findings of fact. He does contest the Administrative Judge's formal findings and, implicitly, his conclusions. We construe his appeal as asserting that the Administrative Judge's conclusions were arbitrary, capricious or contrary to law.

Applicant notes that his last use of marijuana was in June 1996, something that he informed the Administrative Judge about at the hearing. Applicant asserts that he has completely overcome his problems with marijuana. While a period of

abstinence is potentially mitigating evidence, there is other record evidence which provided an adequate basis for the Administrative Judge's adverse conclusions, including Applicant's lengthy drug history (some of his drug use was after treatment) and Applicant's failure to fulfill earlier official commitments not to use drugs in the future. Although Applicant's arrests and trafficking were not especially recent they were a part of his larger pattern of drug involvement. It was not unreasonable of the Administrative Judge to find against Applicant in the formal findings on those marijuana-related issues, given the totality of Applicant's drug history.

The Administrative Judge found that Applicant has a history of falsifying statements about his drug use, including three false answers on a May 1995 National Agency Questionnaire and a February 1996 signed sworn statement containing false material information. Applicant's record of recent multiple falsifications on different dates supports the Administrative Judge's adverse conclusions under both Criterion E and Criterion J. Applicant has apologized for his falsifications, but it was not arbitrary or capricious for the Judge to conclude Applicant has not yet developed a track record which could mitigate the falsification conduct.

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