

DATE: June 5, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0776

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Chief Department Counsel

FOR APPLICANT

Pro se

Administrative Judge John G. Metz, Jr. issued a decision, dated March 19, 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 October 24, 1996 to Applicant. The SOR was based on Criterion H (Drug Involvement), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct). Applicant submitted an answer to the SOR, in which he stated he wanted his case decided without a hearing. A File of Relevant Material (FORM) was prepared, and Applicant was given a copy. Applicant did not submit a response to the FORM.

An 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⁽¹⁾

Applicant makes several arguments in support of his request that the Board remand the case: (a) the Administrative

Judge relied too heavily on Applicant's past; (b) Applicant has offered to cooperate in random drug testing or any other action needed to prove he has reformed with respect to drugs and that he is telling the truth; (c) Applicant's falsifications were the result of bad advice given to him by fellow employees; (d) Applicant did not realize that truthfulness was more important than the fact of his past drug abuse; (e) Applicant believes he has no trouble stating the truth as shown by the fact that he eventually made full disclosure about his drug history to an investigator; and (f) the Administrative Judge did not give Appellant a full and fair consideration of all aspects of the case on their merits. The Board construes these arguments as raising the issue of whether the Judge's decision is arbitrary, capricious, or contrary to law.

The Board will address Appellant's last argument first. There is a rebuttable presumption that an Administrative Judge is impartial and unbiased. *See, e.g.*, ISCR Case No. 94-1055 (May 8, 1996) at p. 2 (citing federal cases). Furthermore, there is a rebuttable presumption that the Administrative Judge considered all the record evidence unless the Judge specifically states otherwise. Apart from these presumptions, a reading of the decision shows the Judge considered the record evidence as a whole, made factual findings about the matters alleged in the SOR, and applied pertinent provisions of the Directive. Nothing in Applicant's appeal brief demonstrates that the Judge failed to give a full, fair, and impartial consideration to Applicant's case.

The Administrative Judge did not err by considering Applicant's past misconduct. The Judge must consider all available information, both favorable and unfavorable, in making a decision about an applicant's security eligibility. Directive, Section F.3. Moreover, a security clearance decision may be based on consideration of a person's past conduct. *See Department of Navy v. Egan*, 484 U.S. 518, 528 (1988). Indeed, the security eligibility of an applicant cannot be meaningfully assessed by looking only at the applicant's present situation and ignoring the applicant's past conduct. Such a piecemeal approach is not practical and it would be inconsistent with the "whole person" concept of security clearance determinations. *See Directive, Adjudicative Guidelines at page 2-3.*

Applicant's offer to cooperate in random drug testing or other actions to prove he has reformed does not change the result. Neither the Administrative Judge nor the Appeal Board is authorized to establish or administer such a program.

The Administrative Judge specifically considered Applicant's motivations when evaluating Applicant's falsification of a National Agency Questionnaire in October 1995 and his written statement in May 1996. In the decision, the Judge explained why Applicant's reasons for making the falsifications did not extenuate or mitigate those falsifications. The Judge's explanation is reasonable, does not reflect legal error, and it is not arbitrary or capricious. Applicant's falsifications were not made any less serious by the fact he eventually disclosed his drug abuse history to an investigator in August 1996. The Judge was not required, as a matter of law or logic, to conclude that the negative security implications of Applicant's October 1995 and May 1996 falsifications were overcome by his August 1996 admissions to the government investigator.

The government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Applicant's history of drug abuse and his acts of deliberate falsification in October 1995 and May 1996 provide a rational basis for the Administrative 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 March 19, 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. The Administrative Judge made favorable formal findings under Criterion H with respect to some aspects of Applicant's drug abuse history. Those favorable formal findings are not at issue on appeal.