

DATE: October 15, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0041

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Mathew E. Malone Esq.

Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Elizabeth M. Matchinski issued a decision, dated June 26, 1997, in which she 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 January 24, 1997. 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 May 22, 1997. The Administrative Judge issued an unfavorable decision on June 26, 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 conclusions with regard to Criterion H (Drug Involvement). We construe his appeal as asserting that the Administrative Judge's conclusions were arbitrary, capricious or contrary to law.

Applicant argues that his 26-year history of marijuana use has been mitigated by his period of abstinence and his current lack of desire to use drugs. The Judge discussed her analysis and concerns as to: Applicant's continued association with

a drug user, Applicant's lengthy drug-use history, Applicant's 14 months of abstinence, and Applicant's desire to maintain defense-related employment. While Applicant can and does argue that the Adjudicative Guidelines mitigating conditions might have been applied differently to the facts in this case, we find no error in the Administrative Judge's careful consideration of all the pertinent facts as she applied the pertinent provisions of the Directive to Applicant's case.

Applicant discusses at some length issues related to falsification. Since the Administrative Judge found for Applicant on the falsification issues, we need not consider those appeal arguments.

Applicant argues that the significance of a failed March 1996 drug test has been overcome by Applicant's more recent negative drug tests. Since the failed drug test was not the primary concern of Administrative Judge in making her findings, we find Applicant's arguments unpersuasive on this point.

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