

DATE: February 3, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0466

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Jerome H. Silber issued a decision, dated October 27, 1997, in which he concluded that 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 Decision of the Administrative Judge.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense (DoD) Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's decision was arbitrary, capricious or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 22, 1997 to Applicant. The SOR was based on Criterion E (Personal Conduct) and Criterion J (Criminal Conduct).

A hearing was held on October 1, 1997. The Administrative Judge later issued a written decision in which he concluded that it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. The case is now before the Board on Applicant's appeal from the adverse decision.

Appeal Issue⁽¹⁾

Applicant contends that there is no reason that he should not be granted his security clearance. In support of this contention Applicant argues: (1) he has demonstrated trustworthiness in that his employer has historically assigned him to sensitive duties and required him to keep confidences and he has never violated that trust; and (2) he has always performed work assignments and carried out the orders of his superiors in a reliable manner. The Board construes Applicant's brief as raising the issue of whether the Judge's decision is arbitrary, capricious or contrary to law.

The Administrative Judge acknowledged Applicant's work ethic, reputation for honesty and blemish-free security record (Decision at p. 3). However, he ultimately concluded that Applicant's deliberate concealment of arrests during the

course of a personnel security investigation was serious enough to disqualify Applicant from the holding of a clearance. The Judge's analysis was consistent with the requirements of the Directive under Section F.3. and the Adjudicative Guidelines. It was appropriate for the Judge to consider whether the specific acts of deliberate falsification established by the evidence of record outweighed the more general evidence of Applicant's trustworthiness and reliability. *See, e.g.*, ISCR Case No. 96-0608 (August 28, 1997) at p. 4.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Even though there is evidence that Applicant has never committed a security violation and has a general reputation for hard work and honesty, his recent and repeated deliberate concealment of material facts from government investigators provides a rational basis for the Administrative Judge to conclude that there is an unacceptable risk that Applicant might engage in similar conduct in the future. Regarding the specific issue of Applicant's good work record, security clearance decisions are not limited to consideration of an Applicant's job performance. *See, e.g.*, ISCR Case No. 96-0825 (November 18, 1997) at pp. 2-3. In this case the Judge gave appropriate weight to the favorable evidence of Applicant's performance of work assignments.

Considering the record as a whole, it was not arbitrary, capricious or contrary to law for the Judge to conclude that Applicant's falsifications warranted an adverse security clearance decision despite evidence of Applicant's favorable employment history and good character.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's October 27, 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's formal finding for Applicant on subparagraph 2.b. of the SOR is not at issue on appeal.