

DATE: April 17, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0628

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision dated January 29, 1998, 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.

The 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 September 15, 1997 to Applicant. The SOR was based on Criterion H (Drug Involvement). Applicant requested a decision without a hearing.

The 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 before the Board on appeal from the unfavorable decision.

Appeal Issue

Applicant makes several arguments on appeal: (1) his security clearance form only inquired about a seven-year period, yet his full history of drug use is being held against him; (2) his local jurisdiction treats marijuana possession as a minor infraction and therefore drug involvement should not be held against him; (3) the Administrative Judge found for Applicant on an SOR paragraph that said Applicant may continue to use drugs until October 1997 and that is inconsistent with the logic of the Judge's analysis; (4) Applicant reduced his drug use of his own volition and therefore does not need rehabilitation; and (5) Applicant has successfully implemented positions of trust before and therefore the Judge did not adequately consider mitigating factors and the concept of the whole person. The Board construes these arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious or contrary to law.

Applicant's first argument fails to demonstrate that the Administrative Judge erred. Applicant has a 17-year history of drug use (from 1980 to 1997). He believes that the drug use which predates the period (seven years) covered on his security clearance form was wrongfully considered. However, the Administrative Judge is responsible for considering the nature and circumstances surrounding an applicant's potentially disqualifying behavior. It is entirely appropriate for the Administrative Judge to consider the Applicant's entire drug history.

Applicant's second argument also fails to demonstrate error below. Applicant asserts that the local jurisdiction where he resides does not generally treat marijuana possession as a serious infraction and that therefore the Federal government should not hold it against Applicant in his security clearance adjudication. The Federal government is not bound by local law authorities in its implementation of Federal law, regulations and directives. The Administrative Judge is responsible for implementing the Directive, which governs security clearance adjudications. Under the Directive, Drug Involvement is a disqualifying condition. The Judge did not err by failing to bow to local law enforcement customs.

Applicant's third argument, although not dispositive, is not without merit. There is an inconsistency between the Judge's findings on Applicant's marijuana use and his formal finding on SOR ¶ 1.b. However, the tenor of the Judge's general analysis of Applicant's overall history of marijuana use is clear enough and supported by the record evidence. The inconsistency between the rest of the Judge's decision and the one formal finding is not sufficient to warrant remand or reversal.

Applicant's fourth argument does not demonstrate error. Although it is commendable that Applicant cut down his drug use, he continued using them and continues to justify the use of illegal drugs for recreational purposes. There is no reason in the record evidence for the Administrative Judge to conclude that merely reducing Applicant's intake proved reform and rehabilitation sufficient to warrant a favorable security clearance decision.

Applicant's fifth argument is not persuasive. The government need not wait for an applicant to commit a security violation in order to revoke or deny access to classified information. *Adams v. Laird*, 420 F. 2d, 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). It is sufficient to have proof of facts and circumstances that indicate that an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability or trustworthiness required of persons handling classified information. *See, e.g.*, ISCR Case No. 97-0281 (April 3, 1998). The Administrative Judge was applying the whole person concept when he concluded that Applicant's drug history had security significance and was too significant to be mitigated.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating harmful error below. Accordingly, the Board affirms the Administrative Judge's January 29, 1998 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

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Administrative Judge

Member, Appeal Board