

DATE: March 31, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0350

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey-Anderson issued a decision, dated November 30, 1998, in which she 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 May 14, 1998 to Applicant. The SOR was based on Criterion H (Drug Involvement), Criterion E (Personal Conduct) and Criterion J (Criminal Conduct).

A hearing was held on November 10, 1998. The Administrative Judge subsequently issued a written decision in which she 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 Applicant's appeal from that adverse decision.

Appeal Issue

On appeal, Applicant does not challenge the Administrative Judge's findings about his history of drug abuse or his falsifications about that drug abuse. However, Applicant contends: (1) he has been "set up as a fall guy" through false allegations that he sold drugs at work; (2) he is "being persecuted for my actions I did 23 or 25 year[s] ago"; (3) he knows "that it was wrong to lie on my security papers"; (4) his past drug abuse was a mistake; (5) if he had more time, he could present more favorable letters from friends and coworkers on his behalf;⁽¹⁾ and (6) he is trying to keep a job and be a father and husband. The Board construes these contentions as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

There is no record evidence to support Applicant's claim that he was falsely accused of selling drugs at work. There is record evidence that indicates he was interviewed in 1998 based on information investigators obtained from an unidentified source that alleged Applicant had purchased drugs at work. Even if the Board assumes, solely for purposes of deciding this appeal, that an unidentified source maliciously made a false allegation about Applicant, such a false allegation is irrelevant to the Administrative Judge's decision. This is because: (a) the SOR issued to Applicant did not allege that Applicant purchased or sold illegal drugs, or that he concealed any purchase or sale of illegal drugs; (b) Department Counsel presented no evidence that indicates Applicant purchased or sold illegal drugs, or that he concealed any purchase or sale of illegal drugs; and (c) the Administrative Judge made no finding that Applicant was involved in the purchase or sale of illegal drugs, or that his falsifications involved concealment of any purchase or sale of illegal drugs. In short, the false allegation Applicant claims was made against him was not used or relied on by the drafter of the SOR, Department Counsel or the Judge in this case.

A reading of the decision below shows that the Administrative Judge did not base her adverse decision on Applicant's drug abuse that occurred in the 1970s. Rather, the Judge considered: (a) the totality of Applicant's drug abuse history, which included use of marijuana (1971-1976) and crystal methamphetamine (1988 and 1997); (b) the fact Applicant's use of crystal methamphetamine occurred after he received a security clearance in 1996; and (c) Applicant's multiple falsifications. Contrary to Applicant's assertion, the Judge's adverse decision is not based on dated drug abuse.

Attached to Applicant's appeal brief are copies of letters and memoranda from various friends and coworkers writing on his behalf. Those documents are duplicates of materials Applicant submitted to the Administrative Judge for consideration. There is a rebuttable presumption that a Judge considered all the record evidence unless the Judge specifically states otherwise. *See, e.g.*, ISCR Case No. 98-0479 (March 11, 1999) at p. 2. Apart from that rebuttable presumption, the Judge specifically noted and discussed that evidence in her decision. The documents submitted on Applicant's behalf did not require the Judge, as a matter of law, to find in Applicant's favor. The Judge properly considered that evidence in light of the record evidence as a whole. *See* Directive, Section F.3. *See also* ISCR Case No. 98-0380 (March 8, 1999) at p. 5 ("When evaluating the record evidence, the Administrative Judge must consider whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*."); ISCR Case No. 97-0727 (August 3, 1998) at p. 4 n.1 ("It is not simply a matter of considering whether other people express favorable opinions about Applicant, but rather: (a) whether the favorable opinions about Applicant are reasonable and well-founded; and (b) what weight reasonably can be placed on such favorable opinions in light of the record evidence as a whole."). Considering the record as a whole, the Board concludes the Judge did not act in a manner that is arbitrary, capricious, or contrary to law when she weighed the favorable character evidence presented on Applicant's behalf.

It was not arbitrary, capricious, or contrary to law for the Administrative Judge to consider Applicant's older drug abuse in light of his more recent drug abuse. *See, e.g.*, ISCR Case No. 98-0223 (October 29, 1998) at p. 3 (noting Administrative Judge must consider totality of an applicant's drug abuse history and not analyze it in a piecemeal manner). However, the Board need not decide whether Applicant's use of crystal methamphetamine in 1997, taken together with his earlier use of marijuana (1971-1976) and crystal methamphetamine (1988), would be sufficient to warrant an adverse security clearance decision under Criterion H. This is because the Judge was not faced with deciding whether to grant or deny Applicant a security clearance based solely on consideration of Applicant's drug abuse history.

Under the whole person concept, the Administrative Judge was required to consider the totality of Applicant's conduct to decide whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. *See, e.g.*, ISCR Case No. 97-0440 (November 23, 1998) at p. 6 (whole person concept requires Judge to consider the record evidence as a whole, not conduct a "piecemeal evaluation of Applicant's various acts of misconduct"). *See also* DISCR Case No. 89-1377 (November 2, 1990) at p. 4 ("Even if . . . any one facet of Applicant's conduct might not, by itself, be sufficient to support an adverse security clearance decision, the Administrative Judge may still consider whether the totality of Applicant's conduct has negative security implications."). *Accord* ISCR Case No. 94-1213 (June 7, 1996) at p. 4. Here, the Judge was not faced with a case that involved only drug abuse. Rather, the Judge had to evaluate Applicant's security eligibility in light of his overall history of drug abuse *and* his multiple falsifications. Considering the totality of Applicant's misconduct, the Judge had a rational basis for concluding it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Conclusion

Because Applicant has failed to demonstrate error below, the Board affirms the Administrative Judge's November 30, 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

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

1. The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item 29. Therefore, no useful purpose would be served by Applicant obtaining and submitting to the Board additional letters from friends and coworkers on his behalf.