

DATE: January 28, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0370

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Kathryn M. Braeman issued a decision, dated October 2, 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 following issues: (1) whether the Administrative Judge erred by finding that Applicant deliberately omitted material facts about her drug history; and (2) whether the Administrative Judge's 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 21, 1998 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 she indicated that she did not want to have a hearing. A File of Relevant Material (FORM) was prepared, and Applicant was given a copy of it. Applicant did not submit a response to the FORM and it was assigned to the Administrative Judge for determination.

The Administrative Judge subsequently issued a written decision. The Judge entered formal findings in favor of Applicant with respect to Criterion J, but formal findings against Applicant with respect to Criterion H and Criterion E. The Judge 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 the Administrative Judge's adverse security clearance decision.

Appeal Issues⁽¹⁾

1. Whether the Administrative Judge erred by finding that Applicant deliberately omitted material facts about her drug history. The Administrative Judge found that Applicant deliberately omitted material facts about her drug abuse history when she executed a Personnel Security Questionnaire (PSQ) in January 1998. On appeal, Applicant contends she has been forthcoming about her past drug abuse, and she did not deliberately conceal facts about her drug abuse history from the government.

The Administrative Judge has the primary responsibility for weighing the evidence and making factual findings. Directive, Additional Procedural Guidance, Item 25. On appeal, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might find adequate to support a conclusion in light of all the contrary evidence in the same record." Directive, Additional Procedural Guidance, Item 32.a. Whether there is sufficient evidence to support a Judge's findings is a question of law, not one of fact. *See, e.g.*, ISCR Case No. 97-0752 (December 4, 1998) at p. 3.

Applicant has denied that she intended to conceal facts about her drug abuse history when she executed the PSQ. Applicant's statements about her intent or state of mind are clearly evidence that the Administrative Judge had to consider. However, the Judge was not bound to accept Applicant's statements about her intent or state of mind at face value. Rather, the Judge had to consider and weigh Applicant's statements in light of the record evidence as a whole. Considering the record as a whole, the Administrative Judge's finding that Applicant deliberately concealed material facts about her drug abuse when she executed the PSQ in January 1998 reflects a plausible interpretation of the evidence. Applicant's ability to argue for an alternate interpretation of the evidence does not, standing alone, demonstrate the Judge's finding of falsification is erroneous. *See, e.g.*, ISCR Case No. 98-0055 (December 31, 1998) at p. 3.

2. Whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law. Applicant asks the Board to reverse the Administrative Judge's decision. In support of this request, Applicant contends: (a) she did not deliberately conceal facts about her drug abuse when she executed a PSQ in January 1998; (b) she is being "raked over the coals because [she] actually admitted that [she] used marijuana"; (c) she will never use marijuana again; and (d) she is a trustworthy person who cares about her job and could be a "great asset" to her employer if she is allowed to work with classified information. The Board construes these arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

The Board has already discussed Applicant's argument that the Administrative Judge erred by finding she deliberately concealed material facts about her drug abuse history when she executed a PSQ in January 1998.

Nothing in the Administrative Judge's decision indicates or suggests the Administrative Judge was "punishing" Applicant because she admitted to marijuana use. Applicant's admissions of marijuana use do not immunize her overall drug abuse history from consideration for its security significance. *See, e.g.*, ISCR Case No. 98-0055 (December 31, 1998) at p. 3. Furthermore, the security significance of Applicant's drug abuse under Criterion H is legally and logically independent of the security significance of Applicant's PSQ falsification under Criterion E.

The Administrative Judge noted Applicant's stated intention not to use illegal drugs ever again, but concluded that Applicant's overall history of drug abuse was too extensive and recent to warrant a favorable formal finding under Criterion H. The Judge's analysis was not arbitrary, capricious, or contrary to law. A Judge must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 97-0699 (November 24, 1998) at p. 3. Furthermore, even when faced with a credible and sincere claim of reform, a Judge must weigh such a claim against the presence or absence of evidence of demonstrated reform and changed behavior. *See, e.g.*, ISCR Case No. 97-0727 (August 3, 1998) at p. 3.

It is irrelevant whether Applicant could be a valuable asset to her employer if she were allowed to have access to classified information. There is no logical connection between Applicant's suitability for access to classified information and her value to her employer. *See, e.g.*, ISCR Case No. 96-0710 (June 20, 1997) at p. 3. It is possible for an applicant to be an asset to his or her employer, yet at the same time fail to demonstrate the high degree of judgment, reliability, and trustworthiness that must be expected of persons granted a security clearance.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Applicant's overall history of drug abuse and her PSQ falsification in January 1998 provide a rational basis for the Administrative Judge's conclusion that it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Conclusion

Applicant has failed to demonstrate that the Administrative Judge erred. Accordingly, the Board affirms the Judge's October 2, 1998 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

See concurring opinion

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

CONCURRING OPINION OF ADMINISTRATIVE JUDGE MICHAEL Y. RA'ANAN

I concur with my colleagues in their legal analysis of this case. The Board as a body has no option to review a case *de novo* and the Administrative Judge's findings and conclusions were legally sustainable. Having said that, given the totality of the circumstances here, it would have been less surprising if the Administrative Judge had used her discretion to conclude that a 1998 college graduate, who has been clean of drugs since some months prior to her Defense Contractor employment was not a security risk.

Similarly Applicant's inconsistencies are not so dramatic as to demand a conclusion that she "deliberately omitted, concealed, and falsified relevant and material facts." Applicant's initial statement (acknowledging 11 occasions of drug use) captured apparently half of the total drug use that the Administrative Judge concluded had occurred --and it was the recent half that Applicant described.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

1. The Administrative Judge's favorable formal finding with respect to Criterion J is not at issue on appeal.

