

DATE: April 22, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0442

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision, dated January 5, 1998, [\(1\)](#) 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.

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 decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated June 26, 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 December 16, 1998. The Administrative Judge subsequently 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 Applicant's appeal from the Administrative Judge's adverse security clearance decision.

Appeal Issue [\(2\)](#)

The Administrative Judge found that Applicant knowingly and wilfully falsified: (1) a security questionnaire in April 1996 by failing to disclose his use of marijuana in 1994; and (2) a written statement he gave to a federal investigator in arch 1998 by failing to disclose his marijuana use after 1979. Applicant does not challenge those findings on appeal. Rather, Applicant asserts: (a) at the hearing he was not asked what his motivation was for withholding information about his drug abuse; (b) his falsifications were motivated by fear of losing his job, and statements made to him by federal investigators that marijuana use was not a matter of serious concern to the Department of Defense; (c) he did not realize that his falsifications constituted a felony because he did not understand the legal significance of the warnings

about Section 1001 of the Title 18 of the U.S. Code; (d) he admitted his marijuana use once he realized that the Department of Defense is concerned about all drug abuse; and (e) he is trustworthy, honest, and respects the law. The Board construes Applicant's arguments as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Although Applicant was not specifically asked at the hearing to explain his motivation for failing to disclose fully his history of marijuana use, Applicant had the opportunity to explain his motivation. *See, e.g.*, Applicant's answer to SOR; Hearing Transcript at pp. 45-50, 56-58, 68-70, 73. Furthermore, an applicant's fear of losing his or her job does not justify or excuse the making of deliberate falsifications to the government in connection with a security questionnaire or a written statement to a federal investigator. *See, e.g.*, ISCR Case No. 96-0685 (November 14, 1997) at p. 2. Accordingly, Applicant's fear that fully disclosing his marijuana use would cause him to lose his job does not render the Administrative Judge's adverse security clearance decision arbitrary, capricious, or contrary to law.

There is no record evidence to support Applicant's appeal argument about what, if anything, federal investigators told him about the seriousness of marijuana use. The Board cannot consider new evidence on appeal. *See* Directive, Additional Procedural Guidance, Item 29.

Applicant's lack of knowledge that his falsifications could be felonious under Section 1001 of Title 18 of the U.S. Code does not excuse or mitigate his knowingly and willful falsifications. There is sufficient record evidence to support the Administrative Judge's finding that Applicant's falsifications were knowing and willful in nature, not the result of innocent mistake or misunderstanding. Applicant's ignorance of the legal significance of Section 1001 does not excuse or mitigate his conscious decision to seek to conceal the full extent of his drug abuse history.

Applicant's eventual disclosure of the information that he had falsified earlier does not render the Administrative Judge's decision arbitrary, capricious, or contrary to law. Applicant's belated admissions about the full extent of his marijuana use did not preclude the Judge from considering the security significance of Applicant's earlier falsifications. Furthermore, Applicant's subsequent disclosure of information that he had previously tried to conceal from the government did not negate the criminality of his falsifications under Section 1001. *See, e.g.*, ISCR Case No. 97-0440 (November 23, 1998) at p. 3; ISCR Case No. 95-0560 (August 16, 1996) at p. 5.

Applicant has not challenged the Administrative Judge's findings and conclusions about his nonfalsification criminal conduct (SOR 3.b. and SOR 3.c.). There is no presumption of error below and the appealing party has the burden of raising and demonstrating that error occurred. *See, e.g.*, ISCR Case No. 98-0479 (March 11, 1999) at p. 2. Accordingly, the Board need not address the Judge's unchallenged findings and conclusions about Applicant's nonfalsification criminal conduct.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980). Security requirements include consideration of a person's honesty, trustworthiness and reliability. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). *See also Harrison v. McNamara*, 228 F.Supp. 406, 408 (D. Conn. 1964)(lying on application for government position requiring a security clearance raises questions about a person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965). Furthermore, criminal conduct raises questions about a person's judgment, reliability, and willingness to comply with his or her legal obligations. Accordingly, the Judge's findings and conclusions about Applicant's falsifications and criminal conduct provide a rational basis for his adverse security clearance decision.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's January 5, 1999 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

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Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

1. A review of the case file indicates the Administrative Judge's decision was issued on January 5, 1999. The typographical error on the Judge's decision concerning its date is not relevant to the merits of this appeal.

2. The Administrative Judge entered formal findings for Applicant with respect to the SOR paragraphs concerning drug abuse (SOR 1.a. through SOR 1.q.) and two of the SOR paragraphs concerning falsification (SOR 2.a. and SOR 2.c.). Those favorable formal findings are not at issue on appeal. Therefore, the Board need not discuss the Judge's findings and conclusions pertaining to those SOR paragraphs.