

DATE: November 12, 1999

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0582

## **APPEAL BOARD DECISION AND REVERSAL ORDER**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Arthur A. Elkins, Esq., Department Counsel

#### **FOR APPLICANT**

Mark Wilensky, Esq.

Administrative Judge Kathryn M. Braeman issued a decision, dated June 29, 1999, in which she concluded it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Department Counsel appealed. For the reasons set forth below, the Board reverses 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.

Department Counsel's appeal presents the following issues: (1) whether the Administrative Judge's findings are supported by substantial evidence; (2) whether the Administrative Judge misapplied various Adjudicative Guidelines; and (3) whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

### **Procedural History**

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated August 25, 1998. The SOR was based on Criterion H (Drug Involvement), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct).

A hearing was held on June 17, 1999. The Administrative Judge subsequently issued a written decision in which she concluded it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The case is before the Board on Department Counsel's appeal from the Administrative Judge's favorable decision.

### **Appeal Issues**

1. Whether the Administrative Judge's findings are supported by substantial evidence. Department Counsel contends various findings by the Administrative Judge are not supported by substantial evidence. Specifically, Department Counsel argues the Judge erred by finding: (a) Applicant did not falsify her August 1997 written statement; (b) Applicant's omissions about her drug abuse were not material; (c) Applicant successfully completed drug rehabilitation programs prescribed and administered by credentialed medical professionals; and (d) Applicant promptly reported a February 1997 drug-related incident to her employer.

The Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge." Directive, Additional Procedural Guidance, Item 32.a. The presence of conflicting record evidence does not diminish a Judge's fact-finding responsibility. However, when the record contains conflicting evidence, the Judge must carefully weigh the evidence in a reasonable, common sense manner and make findings that reflect a reasonable interpretation of the evidence that takes into account all the record evidence. *See, e.g.*, ISCR Case No. 98-0507 (May 17, 1999 at p. 6. *See also* ISCR Case No. 97-0727 (August 3, 1998) at p. 3 ("The Board must consider not only whether there is evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings."). Furthermore, the deference owed to a Judge's credibility determinations does not immunize them from review, nor does it preclude the Board from concluding that a challenged credibility determination cannot be sustained. *See, e.g.*, ISCR Case No. 97-0356 (April 21, 1998) at p. 3.

(a) The Administrative Judge found that Applicant did not falsify her August 1997 written statement (Exhibit 4) by failing to fully disclose her part use of marijuana and cocaine. In support of that finding, the Judge relied on the following predicate findings: (i) Applicant denied the SOR allegation concerning falsification; (ii) Applicant testified credibly that she did not know the Special Agent was coming to interview her and therefore did not have her earlier security questionnaires with her; (iii) Applicant did not clearly remember what had happened 14 years earlier when she was in college; (iv) Department Counsel failed to establish willful falsification by calling the Special Agent to testify despite being aware of Applicant's denial of the SOR allegation concerning falsification; (v) Applicant would not benefit from minimizing her earlier drug abuse because it was no longer material; (vi) Applicant had previously disclosed to the government in 1987 and 1990 her earlier marijuana and cocaine use; (vii) Applicant's past drug use was detailed in a June 1997 adverse information report (Exhibit 1); and (viii) during the August 1997 interview, Applicant was focused on the 1997 cocaine incident. Department Counsel argues the Administrative Judge erred in finding that Applicant did not falsify her August 1997 written statement, contending that the record evidence as a whole does not support that finding.

It was not arbitrary and capricious for the Administrative Judge to consider the evidence that Applicant made disclosures about her past drug abuse to the government in 1987 and 1990 and to her employer in June 1997. That evidence has some probative value as to Applicant's state of mind when she was asked about her drug abuse during the August 1997 interview.

Applicant's denials of any intention to falsify her past drug history in her August 1997 written statement are relevant and material evidence. However, those denials are not conclusive evidence. Rather, Applicant's denials had to be considered in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 98-0620 (June 22, 1999) at p. 2. An intent to falsify can be shown by circumstantial evidence even in the face of denials of any intent to falsify. *See, e.g.*, DISCR Case No. 90-0770 (July 16, 1992) at p. 3. *Cf. Foster v. Dalton*, 71 F.3d 52, 56 (1st Cir. 1995)("Notwithstanding a person's disclaimers, a contrary state of mind may be inferred from what he does and from a factual mosaic tending to show that he really meant to accomplish what he professes not to have intended.")(quoting earlier decision).

Notwithstanding Department Counsel's arguments, there is no basis in the record for the Board to reject the Administrative Judge's conclusion that Applicant was truthful when she testified that she did not know the Special Agent was coming to interview her in August 1997. However, the Judge gave undue weight to that conclusion. Of course, even if Applicant did not know that the Special Agent was coming to interview her, lack of warning did not relieve Applicant of her obligation to give complete, truthful answers to the Special Agent's questions.

It was arbitrary and capricious for the Administrative Judge, in making her finding about Applicant's state of mind, to rely on Department Counsel's decision to not call the Special Agent as a rebuttal witness. The Judge's reasoning is based on the flawed premise that Department Counsel should have presented the Special Agent to testify about Applicant's state of mind during the August 1997 interview, and Department Counsel's failure to do so bolstered the credibility of Applicant's denials of any intent to falsify. The mere fact that Applicant's testimony was not rebutted does not mean that it was conclusive or had to be accepted as true. *See, e.g.*, ISCR Case No. 98-0265 (March 17, 1999) at p. 4 n.2. Furthermore, because the Special Agent could not testify about Applicant's thoughts or mental processes during the

August 1997 interview, the Judge could not reasonably draw an adverse inference from Department Counsel's decision to not call the Special Agent to rebut Applicant's testimony.

It was arbitrary and capricious for the Administrative Judge to reason that Applicant told the truth during the August 1997 interview (and in her August 1997 written statement) because she would not benefit from minimizing her earlier drug abuse because it was no longer material. There is no logical or legal basis for the Judge to make any inference about Applicant's state of mind in August 1997 based on the Judge's conclusion in 1999 that Applicant's earlier drug abuse was no longer material. Furthermore, as will be discussed later in this decision, the Judge erred by finding that Applicant's omissions concerning her earlier drug abuse were not material.

The Administrative Judge's finding that, during the August 1997 interview (including the preparation and execution of Applicant's August 1997 written statement), Applicant did not clearly remember what she did 14 years earlier fails to take into account record evidence that fairly detracts from that finding. The Judge's finding ignores the evidence that Applicant's recollection about her past drug use was refreshed in December 1987 and February 1990 (when she made disclosures about her drug abuse to the government) and, more importantly, again in June 1997 (when she provided information about her drug abuse history to her employer). The Judge's finding also ignores the negative implication that arises from the fact that in August 1997 Applicant affirmatively stated that she had used marijuana on only one occasion while in college. Even if Applicant did not remember the precise number of times she had used marijuana, it strains credulity for Applicant to claim she honestly only remembered a single instance of marijuana use and honestly denied any other use of marijuana. In addition, the Judge's finding ignores the evidence that undercuts Applicant's claim that she fully disclosed, to the best of her recollection, her cocaine use. The Judge's finding ignores the admission against self-interest that Applicant made to a police officer in February 1997 when she admitted to using cocaine occasionally since college (Exhibit 5 at page 5).<sup>(1)</sup> That admission raises a serious question about Applicant's candor with the government about her drug abuse history.

Finally, the Administrative Judge's finding that Applicant was focused on the February 1997 cocaine incident during the August 1997 interview does not reflect a reasonable interpretation of the record evidence. Applicant's August 1997 written statement (Exhibit 4) covers a variety of issues other than the February 1997 cocaine incident, including Applicant overall history of cocaine and marijuana use. And, on cross-examination, Applicant admitted that the Special Agent asked her about more than just the February 1997 crack cocaine incident. The record evidence shows Applicant addressed more than just the February 1997 cocaine incident during her interview with the Special Agent and in her written statement.

Considering the record as a whole, the Administrative Judge's finding that Applicant did not falsify her August 1997 written statement is based on arbitrary and capricious reasoning and fails to adequately take into account contrary record evidence.

(b) The Administrative Judge erred by finding that Applicant's omissions about her earlier drug abuse were not material. The Judge's finding is based on a view of materiality that is untenable. In falsification cases, materiality is not limited to consideration of whether the falsification at issue would ultimately result in an adverse security clearance adjudication. Materiality also covers information that is relevant to a security clearance investigation. *See, e.g.*, ISCR Case 95-0818 (January 31, 1997) at pp. 2-3. Furthermore, under the whole person concept, the entire history of Applicant's drug abuse, not merely the most recent period of that drug abuse, must be considered in evaluating Applicant's security eligibility. *See, e.g.*, ISCR Case No. 98-0350 (March 31, 1999) at p. 3 (noting earlier Board decision that held Administrative Judge must consider the totality of an applicant's drug abuse history and not analyze it in a piecemeal manner). Given Applicant's cocaine use during the period November 1996-February 1997, Applicant's entire history of drug abuse was very much relevant and material when the Special Agent interviewed her in August 1997, and in the current adjudication of her security eligibility. Because Applicant's earlier drug abuse was material for purposes of both the investigation and adjudication of her security eligibility, the Judge's finding that it was not material is arbitrary, capricious, and contrary to law.

(c) There is record evidence that supports the Administrative Judge's finding that Applicant attended a drug rehabilitation program as part of a court-ordered drug diversion program in lieu of being criminally prosecuted for possession of cocaine, and that Applicant participated in a corporate-sponsored drug rehabilitation program. However,

there is insufficient record evidence<sup>(2)</sup> to support the Judge's finding that those programs involved credentialed medical professionals. The record evidence on this point is sparse and wholly inadequate to support the Judge's finding.<sup>(3)</sup>

(d) The Administrative Judge erred by finding that Applicant promptly reported the February 1997 crack cocaine incident to her employer. The crack cocaine incident occurred on February 9, 1997. On March 23, 1997, Applicant accompanied her lawyer to receive an arrest warrant in connection with the crack cocaine incident. Applicant appeared in court on May 2, 1997 and had her criminal case handled through a drug diversion program. Applicant told her employer about the crack cocaine incident in the middle of June 1997. The record as a whole does not support the Judge's finding that Applicant reported the incident "promptly" to her employer. *Cf.* ISCR Case No. 99-0201 (October 12, 1999) at pp. 3-4 (discussing what constitutes a prompt, good-faith disclosure under Personal Conduct Mitigating Condition 3).

2. Whether the Administrative Judge misapplied various Adjudicative Guidelines. Department Counsel contends the Administrative Judge erred in her application of various Adjudicative Guidelines. The Board will address each of these assignments of error in turn.

(a) Drug Involvement Mitigating Condition 1.<sup>(4)</sup> The Administrative Judge concluded Applicant's drug abuse was not recent because it ended in February 1997. Department Counsel contends the Judge erred because: (i) the Board held it was not arbitrary or capricious for a Judge in another case to hold that drug use that occurred within 14 months was too recent to warrant application of Drug Involvement Mitigating Condition 1; and (ii) the Judge erred because her application of Drug Involvement Mitigating Condition 1 unfairly allows Applicant to benefit from the passage of time that resulted from several continuances during the processing of this case on the hearing level.

(i) Department Counsel's reliance on the cited Board decision is misplaced. The Board has declined to set any "bright line" test or standard for determining what constitutes "recent." *See, e.g.,* ISCR Case No. 98-0394 (June 10, 1999) at pp. 2-3. Department Counsel's argument fails to persuade the Board that it should establish such a "bright line" test or standard in this case.

(ii) The Board rejects Department Counsel's argument concerning the effect of continuances. At the hearing level, if Department Counsel believes that a continuance is not requested in good faith, would prejudice its case, or would give an applicant an unfair advantage, then Department Counsel can oppose the continuance request on those grounds. *Cf.* ISCR Case No. 94-0084 (December 13, 1994) at p. 3 (noting matters that an Administrative Judge should take into consideration when faced with a request for continuance). Department Counsel did not do so in this case. Accordingly, the Judge acted properly when she declined to "take the continuances out" when computing the passage of time since the February 1997 crack cocaine incident.

(b) Drug Involvement Mitigating Condition 3.<sup>(5)</sup> The Administrative Judge concluded Applicant had demonstrated an intent not to use illegal drugs again because Applicant had not used illegal drugs since February 1997, Applicant satisfactorily completed drug treatment programs prescribed by credentialed medical professionals, and Applicant now understands the consequences of cocaine use. Department Counsel contends the Judge erred because: (i) Applicant's drug rehabilitation was mandatory, not voluntary; (ii) Applicant was not credible in testifying she did not remember reading her employer's written drug policy; (iii) Applicant minimized her drug abuse as "recreational"; and (iv) Applicant's prior stated intentions not to use drugs in the future were followed by drug abuse after a few years.

The mandatory nature of Applicant's drug rehabilitation efforts after the February 1997 crack cocaine incident did not preclude the Administrative Judge from considering whether the record as a whole showed that Applicant demonstrated an intent to not use illegal drugs in the future. Department Counsel's argument to the contrary is not persuasive. The Board declines to conclude that mandatory drug rehabilitation will, as a matter of law, preclude application of Drug Involvement Mitigating Condition 3 in any case.

Standing alone, Applicant's testimony that she did not remember reading her employer's written drug policy is not inherently incredible.<sup>(6)</sup> However, viewed in conjunction with other record evidence, Applicant's testimony on that point indicates an overall cavalier attitude about drug abuse. In addition to professing a lack of recollection about her

employer's written drug policy, Applicant: (a) used cocaine after being granted a security clearance; (b) expressed the view that she did not think her cocaine use would affect her ability to do her job or hold a security clearance; (c) indicated that she viewed cocaine use (which included crack cocaine use) as no more serious than her earlier marijuana use; (d) saw her drug abuse as only "recreational" in nature; (e) apparently saw nothing wrong about her past use of crack cocaine as long as her minor daughter (then about a year old) was not in the same room<sup>(7)</sup>; and (f) viewed the February 1997 crack cocaine incident as an isolated one, despite her past history of drug abuse. The Board finds persuasive Department Counsel's argument that the record evidence as a whole shows Applicant does not view illegal drug use very seriously.

The Administrative Judge correctly found that Applicant returned to cocaine use in November 1996 after telling the government in December 1987 and February 1990 that she did not intend to use illegal drugs again. Having failed to abide by those stated intentions, Applicant's return to cocaine abuse in November 1996 raised serious questions whether Applicant is willing or able to abide by her statements about not intending to use illegal drugs again. The totality of the record evidence shows Applicant fails to appreciate the nature and seriousness of her drug abuse, which undercuts the Judge's finding about Applicant's intentions concerning future drug use.

(c) Drug Involvement Mitigating Condition 4.<sup>(8)</sup> As discussed earlier in this decision, there is insufficient record evidence to support the Administrative Judge's finding that Applicant attended treatment programs that involved credentialed medical professionals. Accordingly, it was arbitrary and capricious for the Judge to apply Drug Involvement Mitigating Condition 4 in this case.

(d) Personal Conduct Mitigating Condition 1.<sup>(9)</sup> The Administrative Judge applied Personal Conduct Mitigating Condition 1, apparently based on her finding that the earlier drug abuse that Applicant failed to disclose to the Special Agent during the August 1997 interview and in her August 1997 written statement was not material. As discussed earlier in this decision, the Judge's finding that the omitted information was not material is unsustainable. Accordingly, there is no rational basis for the Judge to apply Personal Conduct Mitigating Condition 1.

(e) Personal Conduct Mitigating Condition 2.<sup>(10)</sup> Department Counsel contends the Administrative Judge erred by applying this Mitigating Condition. Personal Conduct Mitigating Condition 3, not Personal Conduct Mitigating Condition 2, must be considered when a case involves the issue of whether an applicant has made disclosures that are corrections of an earlier falsification. *See* ISCR Case No. 97-0595 (May 22, 1998) at p. 4. Under the particular facts of this case, the Judge did not have a rational basis for applying Personal Conduct Mitigating Condition 2.

(f) Criminal Conduct Mitigating Condition 1.<sup>(11)</sup> Department Counsel challenges the Administrative Judge's application of Criminal Conduct Mitigating Condition 1. In support of that challenge, Department Counsel makes a variation of its arguments concerning Drug Involvement Mitigating Condition 1. The Board need not repeat its discussion of those arguments here.

(g) Criminal Conduct Mitigating Condition 2.<sup>(12)</sup> Department Counsel contends the Administrative Judge erred by applying Criminal Conduct Mitigating Condition 2 because there was record evidence that Applicant's use of crack cocaine that resulted in her arrest in February 1997 was not an isolated incident. Department Counsel's contention is well-founded. Given Applicant's overall history of drug abuse, there was no rational basis for the Judge to apply Criminal Conduct Mitigating Condition 2.

(h) Criminal Conduct Mitigating Condition 4.<sup>(13)</sup> Department Counsel correctly notes that the Administrative Judge did not specifically state why she applied Criminal Conduct Mitigating Condition 4. However, reading the Judge's decision in its entirety, the Board concludes the Judge's application Criminal Conduct Mitigating 4 appears to be based on the reasons the Judge gave for finding that Applicant had shown clear evidence of successful rehabilitation. As will be discussed next, the record evidence as a whole does not support the Judge's finding of clear evidence of successful rehabilitation. Accordingly, the Board concludes the Judge failed to articulate a rational basis for applying Criminal Condition Mitigating Condition 4.

(i) Criminal Conduct Mitigating Condition 5.<sup>(14)</sup> The Administrative Judge applied Criminal Conduct Mitigating

Condition 5 based on her favorable conclusions about Applicant's drug rehabilitation and her finding that Applicant did not falsify her August 1997 written statement. Department Counsel contends the record evidence as a whole does not support the Judge's finding of rehabilitation. In support of that contention, Department Counsel reiterates several of its arguments. For the various reasons set forth earlier in this decision, the Board concludes the Judge's finding of clear evidence of successful rehabilitation cannot be sustained in light of record evidence that clearly runs counter to it.

3. Whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law. In addition to its other appeal arguments, Department Counsel contends the Administrative Judge's decision is arbitrary, capricious, or contrary to law because: (a) the Judge erred by refusing to consider uncharged conduct by Applicant to assess Applicant's credibility, evaluate Applicant's evidence of mitigation, apply pertinent Adjudicative Guidelines, and assess Applicant's claim of rehabilitation; (b) the Judge erred by finding Applicant's drug abuse during the period 1979-1984 was no longer material; (c) the Judge failed to articulate what weight she gave to Applicant's lack of judgment in using crack cocaine when her minor daughter was present in the home; (d) the record evidence does not support the Judge's finding that Applicant's drug rehabilitation programs were prescribed and administered by credentialed medical professionals; (e) the Judge gave disproportionate weight to the assessment of Applicant's employer; and (f) the Judge gave undue weight to her finding that Applicant has ceased to have any contact with a friend who provided her and her cohabitant with cocaine.

(a) At the hearing, the Administrative Judge correctly noted that the Appeal Board has held that uncharged conduct cannot be used to base an adverse security clearance decision. However, as Department Counsel correctly notes, the Board has held that uncharged conduct can be considered: "(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, and changed circumstances; (c) to decide whether a particular Adjudicative Guideline is applicable; and (d) to evaluate whether an applicant has demonstrated success in his rehabilitation efforts." ISCR Case No. 97-0595 (May 22, 1998) at p. 6. Accordingly, the Judge erred by failing to consider evidence of uncharged conduct by Applicant for those limited purposes.

(b) As discussed earlier in this decision, the Administrative Judge erred in finding that Applicant's drug abuse during the period 1979-1984 was no longer material.

(c) As discussed earlier in this decision, Applicant did not appear to be concerned about the negative implications of using crack cocaine while her minor daughter (then about a year old) was in the home, noting that she never used cocaine in the presence of her daughter. Whatever mitigating weight can be placed on Applicant's decision not to use crack cocaine in the actual presence of her minor daughter, it is untenable for Applicant to suggest that her use of crack cocaine was made therefore somewhat reasonable. As a matter of common sense, a parent who uses crack cocaine while responsible for a minor infant demonstrates a clear lack of judgment, reliability, and trustworthiness. The Judge's failure to factor this into her evaluation of Applicant's drug abuse history is inconsistent with her responsibility to evaluate this case in light of the record as a whole and the Section F.3. factors.

(d) As discussed earlier in this decision, the Administrative Judge did not have sufficient evidence to find that Applicant's drug rehabilitation programs were prescribed and administered by credentialed medical professionals.

(e) The Administrative Judge gave great weight to the positive assessment of Applicant expressed by her superiors. Considering the record as a whole, the Judge erred by giving undue weight to that evidence. Favorable opinions by an applicant's superiors or coworkers are relevant information that can be considered by a Judge under the whole person concept. However, the Judge cannot consider those opinions in isolation, but rather must consider: (i) whether they are reasonable and well-founded, and (ii) what weight reasonably can be placed on them in light of the evidence as a whole. *See, e.g.*, ISCR Case No. 99-0201 (October 12, 1999) at p. 5. Although Applicant's superior made very favorable statements about Applicant's job performance and her value to the company, he also testified: (i) he was totally surprised by Applicant's involvement with crack cocaine, (ii) he was unaware Applicant used cocaine before 1997; and (iii) Applicant is under increased scrutiny at work because of the February 1997 crack cocaine incident. Furthermore, the favorable opinions expressed by Applicant's superior (and Applicant's supervisor in Exhibit C) are based on an assessment of her performance during duty hours and shed little meaningful light on Applicant's off-duty conduct. Even when Applicant was using crack cocaine during the period November 1996-February 1997, her superiors were unaware of that misconduct.

Apart from the qualified nature of the favorable remarks made by Applicant's supervisor, Department Counsel correctly notes that an applicant's value to his or her employer is not relevant to an evaluation of the applicant's security eligibility. *See, e.g.*, ISCR Case No. 98-0435 (September 16, 1999) at p. 2. Applicant's job skills and her value to her employer do not reduce or diminish the negative security implications of her conduct. It was arbitrary and capricious for the Administrative Judge to give great weight to the opinions about Applicant's talents and job performance expressed by her superiors.

(f) Department Counsel fails to make a persuasive argument that the Administrative Judge gave undue weight to her finding that Applicant has ceased to have any contact with a friend who provided her and her cohabitant with cocaine.

### **Conclusion**

The Board need not decide whether the various errors made by the Administrative Judge are individually harmful. Considering the record evidence in this case, the Judge's errors, viewed in their totality, are harmful and warrant reversal. Accordingly, pursuant to Item 33.c. of the Directive's Additional Procedural Guidance, the Board reverses the Administrative Judge's June 29, 1999 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. Statements in police reports about matters personally observed by reporting officers in the execution of their duties are admissible in these proceedings. *See, e.g.* ISCR Case No. 99-0119 (September 13, 1999) at pp. 2-3. Applicant's admission to a police officer about her post-college cocaine use falls in that category of evidence. Although Applicant specifically challenged the accuracy of some specific portions of Exhibit 5, she did not specifically challenge the accuracy of its statement about her admission of post-college cocaine use.

2. Whether there is sufficient record evidence to support an Administrative Judge's findings is a question of law, not a question of fact. *See, e.g.*, ISCR Case No. 98-0419 (April 30, 1999) at p. 3.

3. The record evidence cited by Applicant clearly supports the Administrative Judge's finding that Applicant participated in drug rehabilitation programs. However, that evidence does not show whether the programs were administered by credentialed medical professionals.

4. "[T]he drug involvement was not recent."

5. "[A] demonstrated intent not to abuse any drugs in the future."
6. Applicant admitted she was aware of her employer's drug policy. In addition, Applicant's supervisor testified that the company has a written drug policy that Applicant would have received and would have had to sign off on.
7. As will be discussed later in this decision, Department Counsel contends the Administrative Judge erred by failing to discuss the significance of Applicant's use of crack cocaine at times that her minor daughter was in the home.
8. "[S]atisfactory completion of a drug treatment program prescribed by a credentialed medical professional."
9. "[T]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability."
10. "[T]he falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily."
11. "[T]he criminal conduct was not recent."
12. "[T]he crime was an isolated incident."
13. " . . . "the factors leading to the violation are not likely to recur."
14. "[T]here is clear evidence of successful rehabilitation."