

DATE: November 23, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0621

**APPEAL BOARD DECISION
ON APPLICANT'S REQUEST
FOR RECONSIDERATION**

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Pro Se

On August 19, 1999, the Board issued an Appeal Board Decision (hereinafter "Decision") in this case. Applicant submitted a Request for Reconsideration dated October 6, 1999. Department Counsel submitted a response to Applicant's Request for Reconsideration. For the reasons that follow, the Board reaffirms its August 19, 1999 Decision.

Nothing in Executive Order 10865 or Department of Defense Directive 5220.6 addresses the question of whether the Board has the authority to reconsider its decisions. However, even in the absence of a pertinent statutory or regulatory provision, an agency has the inherent authority to reconsider its decisions. ISCR Case No. 96-0785 (October 5, 1998) at pp. 1-2 (citing federal cases). *See also Gorbach v. Reno*, 179 F.3d 1111, 1123-24 (9th Cir. 1999). And, the Board has held that it has the authority to consider a motion for reconsideration. *Id.* at p. 2 (citing earlier Board decisions).

There is no right to reconsideration; rather, the Board has the sole discretion to decide whether to exercise its inherent authority to reconsider one of its decisions. DISCR Case No. 86-1802 (September 23, 1988) at p. 2. Considering all the circumstances, the Board will exercise its discretion and consider the merits of Applicant's Request for Reconsideration.

Reconsideration Issues

In support of the Request for Reconsideration, Applicant argues: (1) he needs a security clearance to maintain employment in the career field for which he is trained; (2) an adverse security clearance decision would result in termination of his employment and cause a great hardship for him and his family; (3) his criminal conduct (for which he was court-martialed and dismissed from the military in 1991) was not recent or recurring; (4) he did not intentionally or deliberately falsify relevant information on his security questionnaire; (5) he has the support of family, friends, colleagues, customers, and coworkers, who have expressed their respect and trust for him; (6) he has never had a security violation during his military service or his employment with a defense contractor; (7) his superiors have demonstrated their confidence in his reliability and trustworthiness; (8) he has learned painful lessons from his past misconduct, knows he has a debt to pay, and constantly tries to develop and maintain an exemplary character in his

personal life and his community; and (9) his past misconduct involved "a terrible misjudgment," from which he has learned and will not repeat.

In most cases, it is likely that denial or revocation of a security clearance will have an adverse effect on an applicant's ability to retain employment with a defense contractor. However, that possible consequence is irrelevant to an adjudication of an applicant's security eligibility. An applicant is not made more or less suitable for a security clearance based on how a security clearance decision might affect the applicant. *See, e.g.*, ISCR Case No. 98-0743 (October 15, 1999) at p. 3. The negative security implications of Applicant's falsifications in 1998 are not negated or reduced by the fact that an adverse security clearance decision may have adverse effects on Applicant's life. The compelling interest of the federal government in protecting and safeguarding classified information, *Department of Navy v. Egan*, 484 U.S. 518, 527 (1988), is not trumped by an applicant's desire to avoid the negative collateral consequences of an adverse security clearance decision.

Applicant's argument about the dated nature of his criminal conduct in the late 1980s is misplaced. As the Board noted in its August 19, 1999 Decision, the Administrative Judge's adverse decision was not based on that dated criminal conduct. The Judge made his adverse decision based on Applicant's falsifications in 1998, not Applicant's criminal conduct in the late 1980s. Because the Judge did not base his adverse decision on Applicant's criminal conduct in the late 1980s, Applicant's argument about it is factually and legally irrelevant to his appeal and his Request for Reconsideration. Having prevailed on that aspect of the case before the Judge on the hearing level, Applicant has no logical or legal reason to complain on this point.

Applicant's remaining arguments are reiterations of arguments made in his initial appeal. The Board addressed Applicant's arguments in its August 19, 1999 Decision and concluded they failed to demonstrate the Administrative Judge's decision was arbitrary, capricious, or contrary to law. Applicant's Request for Reconsideration does not provide any reason for the Board to conclude it overlooked or failed to consider any of Applicant's earlier appeal arguments, or otherwise erred in its August 19, 1999 decision. Furthermore, Applicant's Request for Reconsideration sets forth no reason why the Board should change or revise its earlier disposition of Applicant's appeal arguments.

Conclusion

Applicant's Request for Reconsideration fails to set forth any reason why the Board should change any of the rulings it made in connection with Applicant's initial appeal. Accordingly, the Board's August 19, 1999 Decision stands.

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

