

DATE: June 16, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0723

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Jerome H. Silber issued a decision, dated February 19, 1999, 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 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 November 10, 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 February 2, 1999. 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 decision.

Appeal Issue⁽¹⁾

The Administrative Judge found that Applicant deliberately falsified his drug history (which included the use of marijuana, and selling cocaine and marijuana) in a security questionnaire he executed in April 1998 and in a written statement he gave to a federal investigator in August 1998. The Judge concluded Applicant's drug history was mitigated sufficiently to warrant entry of formal findings for Applicant under Criterion H. However, the Judge concluded Applicant's falsifications were recent, serious and not extenuated by his motive for lying to the government. The Judge also concluded there was insufficient evidence of reform to mitigate Applicant's falsifications. The Judge entered formal

findings against Applicant under Criterion E and Criterion J based on his falsifications, and concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Applicant does not challenge the Administrative Judge's factual findings about his falsifications. However, Applicant argues: (a) he realizes he made mistakes in his past; (b) his past mistakes were the result of his youth and his failure to consider the seriousness of his actions; (c) he has changed and is a better person now; (d) he lied to the government about his past involvement with drugs because he was afraid he would lose his job if he admitted the truth, and he was concerned how that would keep him from providing for his family; (e) he admitted the truth in another interview before he was polygraphed; (f) he should not be punished for his past misconduct after he has changed for the better; and (g) he should be given another chance based on his present situation. The Board construes these arguments as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes Applicant's arguments fail to demonstrate the Judge erred.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Security requirements include consideration of a person's judgment, reliability, and trustworthiness. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Persons who engage in deliberate acts of falsification in connection with a security clearance application or investigation raise serious questions about their suitability for a security clearance. *See Harrison v. McNamara*, 228 F. Supp. 406, 408 (D. Conn. 1964)(lying on application for government position requiring a security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965). Given Applicant's deliberate falsifications about his drug history, Applicant had the burden of presenting evidence of extenuation, mitigation, or changed circumstances sufficient to warrant a favorable security clearance decision. Directive, Additional Procedural Guidance, Item 15. Given the clearly consistent with the national interest standard, that burden of persuasion is a heavy one.

A reading of the decision shows the Administrative Judge considered the facts and circumstances of Applicant's falsifications, which occurred in April 1998 and August 1998, as well as Applicant's disclosures about his drug history to a federal investigator in September 1998. The Judge acted within the bounds of his discretion when he concluded Applicant's disclosures were entitled to little weight under the particular facts of this case. The Judge's discussion of Applicant's falsifications reflects a reasonable analysis of Applicant's case under Section F.3. and pertinent provisions of the Adjudicative Guidelines. Furthermore, the Judge's adverse conclusions about Applicant's security eligibility follow rationally from the Judge's findings, which are supported by the record evidence and are not challenged on appeal. None of the arguments made by Applicant on appeal demonstrates the Judge's analysis and conclusions are arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's February 19, 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. The Administrative Judge's formal findings for Applicant under Criterion H are not at issue on appeal.