

DATE: September 21, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0034

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Joseph Testan issued a decision, dated June 29, 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 adverse 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 January 20, 1999 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 he indicated he did not wish to have a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant, who did not submit a response to it. The case was then assigned to the Administrative Judge for disposition.

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 that adverse decision.

Appeal Issue

The Administrative Judge found: (a) Applicant purchased and used of marijuana during the period 1974-November 1997; (b) Applicant used cocaine about six times during the period 1993-1996; (c) Applicant was arrested on drug-related charges in 1974, 1983, and 1994, with all the charges being later dropped or dismissed; (d) Applicant

intentionally falsified a security clearance form in April 1998 by denying he had ever been arrested or charged and denying that he had ever used illegal drugs in the past; and (e) during an October 1998 interview by a Special Agent of the Defense Security Service, Applicant falsely denied that he had ever been arrested or charged with a crime other than a 1992 arrest for driving under the influence. The Judge concluded Applicant's conduct warranted an adverse security clearance decision.

On appeal, Applicant does not challenge the Administrative Judge's factual findings. Rather, Applicant asserts his past mistakes are not reason enough to deny him a security clearance. The Board construes Applicant's assertion as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

Contrary to Applicant's assertion, Applicant's history of drug abuse and falsification provide a rational basis for the Administrative Judge's adverse security clearance decision. 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). A history of drug abuse raises questions about an applicant's suitability for access to classified information. *See, e.g., AFG Local 1533 v. Cheney*, 944 F.2d 503, 506 n.6 (9th Cir. 1991)(noting various ways that drug abuse could pose security risks). 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 history of drug abuse and falsification, the Judge's adverse conclusions about Applicant's security eligibility are not 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 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