

DATE: January 18, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0212

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Roger C. Wesley issued a decision, dated September 20, 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 decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated March 26, 1999 to Applicant. The SOR was based on Criterion H (Drug Involvement), Criterion J (Criminal Conduct), and Criterion E (Personal Conduct).

Applicant submitted an answer to the SOR in which she indicated she wanted a decision made in her case without a hearing. A File of Relevant arial (FORM) was prepared, and a copy of the FORM was given to Applicant. Applicant submitted additional information in response to the FORM. The case was then assigned to the Administrative Judge for disposition. The Judge issued a written decision, dated September 20, 1999. The Judge entered formal findings in favor of Applicant under Criterion H, but formal findings against her under Criterion E and Criterion J, and 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

Applicant does not challenge the Administrative Judge's findings that: (a) Applicant had a series of arrests in 1994 (shoplifting), January 1995 (theft), March 1995 (grand theft), and June 1995 (forgery and resisting an officer without violence); (b) Applicant was found guilty of the grand theft charge and sentenced to 18 months probation and ordered to

complete 50 hours of community service, with a bench warrant outstanding as of December 1996 for failing to comply with court conditions; (c) Applicant was found guilty of the charges of forgery and resisting an officer without violence and fined and assessed court costs; and (d) Applicant falsified a security questionnaire in June 1998 by omitting her criminal record, an arrest for marijuana possession, and three delinquent debts, as well as understating the extent of her marijuana use.

However, Applicant does makes several arguments on appeal: (1) persons who presented information against her do not know her personally; (2) she presented documentation from her employer demonstrating she is a reliable, trustworthy employee; (3) she presented evidence concerning the circumstances of her arrests; and (4) she is a changed person today. The Board construes these arguments as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.⁽¹⁾ For the reasons that follow, the Board concludes Applicant has failed to demonstrate the Judge erred.

During the proceedings below, Applicant did not object to the documentation contained in the FORM. Moreover, Applicant did not contest the SOR allegations, but admitted them with explanation. In addition, Applicant has not challenged the Administrative Judge's findings of fact about her history of criminal conduct and falsification. Accordingly, it is irrelevant whether third parties who provided information to the police and juvenile court authorities (which appears in some of the documentation in the FORM) personally knew Applicant.

The favorable documentation cited by Applicant on appeal was specifically addressed by the Administrative Judge in his decision. The presence of such favorable documentation did not compel the Judge, as a matter of law, to make a favorable security clearance decision. The Judge acted properly when he considered all the record evidence, both favorable and unfavorable, and decided whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. See, e.g., ISCR Case No.98-0761 (December 27, 1999) at p. 3. Nothing in Applicant's appeal brief persuades the Board that the Judge weighed the record evidence improperly.

A review of the Administrative Judge's decision shows he considered the facts and circumstances of Applicant's criminal record and her falsification in making his conclusions about Applicant's security eligibility. The Judge's analysis of Applicant's overall history of conduct was consistent with his obligation to consider the record as a whole and make a common sense determination under Section F.3. of the Directive, including consideration of pertinent Adjudicative Guidelines. Considering the record as a whole, the Judge's conclusions follow rationally from his factual findings and they do not reflect any arbitrary or capricious action by the Judge. Furthermore, the Judge's findings and conclusions about Applicant's history of criminal conduct and falsification provide a rational basis for his adverse security clearance decision.

Conclusion

Applicant has failed to meet her burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's September 20, 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 favorable formal findings for Applicant under Criterion H are not at issue on appeal.