

DATE: April 13, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0298

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 December 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 following issue: whether the Administrative Judge erred by finding that Applicant falsified a security questionnaire in July 1998 by not listing a June 1996 arrest for shoplifting.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 28, 1999 to Applicant. The SOR was based on Criterion D (Sexual Behavior), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct). A hearing was held on November 17, 1999. The Administrative Judge issued a written decision, dated December 20, 1999, 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 Judge's adverse decision.

Appeal Issue

The Administrative Judge found: (a) Applicant is a 47-year-old man; (b) Applicant was arrested for shoplifting in June 1996 after he tried to steal a pair of boots from a department store; (c) Applicant was convicted of shoplifting, fined, and placed on two years probation; (d) Applicant was arrested and charged with indecent exposure in January 1997 after he had urinated in public; (e) Applicant later pleaded guilty to the indecent exposure charge, was sentenced to five days in jail (suspended), placed on two years probation, and ordered to get counseling; (f) Applicant completed the required counseling and is no longer on probation; and (g) Applicant intentionally concealed his 1996 arrest and conviction for shoplifting when he completed and executed a security questionnaire in July 1998.

On appeal, Applicant does not challenge the Administrative Judge's findings about the 1996 shoplifting incident or the 1997 indecent exposure incident. However, Applicant contends he did not falsify the security questionnaire in July

1998. For the reasons that follow, the Board concludes Applicant has not demonstrated the Judge erred by finding Applicant falsified the security questionnaire.

The record below contains written statements and testimony by Applicant about his state of mind and intentions when he completed and executed a security questionnaire in July 1998. The Administrative Judge had the opportunity to consider and weigh those written and testimonial statements by Applicant. Applicant's statements were relevant and material evidence, but they were not binding on the Judge. Rather, the Judge had the obligation to consider Applicant's statements in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 98-0620 (June 22, 1999) at p. 2. Applicant's denials of an intent to falsify were not binding or conclusive on the Judge. An intent to falsify can be shown by circumstantial evidence even in the face of denials of any intent to falsify. *See, e.g.*, ISCR Case No. 99-0355 (December 14, 1999) at p. 2. The Judge had to consider the record as a whole and decide whether to believe or disbelieve Applicant's denial of any intent to falsify the security questionnaire in July 1998.

Absent a showing that an Administrative Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law, the Board will not disturb the Judge's findings. *See, e.g.*, ISCR Case No. 98-0657 (November 16, 1999) at p. 3. Applicant's ability to argue for an alternate interpretation of the record evidence concerning his omission of the 1996 shoplifting incident from the security questionnaire is not sufficient to demonstrate the Judge's finding is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 98-0620 (June 22, 1999) at p. 3 (citing federal cases and earlier Board decisions). Considering the record as a whole, the Judge's finding that Applicant falsified the security questionnaire in July 1998 reflects a plausible interpretation of the record evidence and, therefore, that finding is sustainable.

The federal government must be able to repose a high degree of trust and confidence in persons granted a security clearance. The Administrative Judge's findings and conclusions about Applicant's conduct are supported by the record evidence and provide a rational basis for his adverse conclusions about Applicant's security eligibility.

Conclusion

Applicant has not demonstrated error below. Accordingly, the Board affirms the Administrative Judge's December 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