

DATE: December 14, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0355

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision, dated September 1, 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 issues: (1) whether the Administrative Judge erred by finding Applicant knowingly and willfully falsified material facts about his criminal record when he executed a security questionnaire in March 1998; and (2) 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 June 1, 1999 to Applicant. The SOR was based on Criterion E (Personal Conduct) and Criterion J (Criminal Conduct).

Applicant submitted an answer to the SOR, in which he indicated he wanted "a decision without a hearing." A File of Relevant Material (FORM) was prepared, and Applicant was given a copy of the FORM. Applicant did not submit a response to the FORM. The case was then given to the Administrative Judge for determination. The Judge issued a written decision, dated September 1, 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 Issues

1. Whether the Administrative Judge erred by finding Applicant knowingly and willfully falsified material facts about his criminal record when he executed a security questionnaire in March 1998. The Administrative Judge found that Applicant knowingly and willfully falsified a security questionnaire in March 1998 when Applicant denied that he had been charged with any felony offenses, and also denied that he had been charged with any alcohol-related offenses.

Applicant contends the Judge erred because his failure to disclose his criminal record because he did not understand the questions on the security form. For the reasons that follow, the Board concludes Applicant's contention is not persuasive.

The Administrative Judge had the opportunity to consider and weigh Applicant's statements about his state of mind and intentions when he executed the security questionnaire in March 1998. 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. An intent to falsify can be shown by circumstantial evidence even in the face of denials of any intent to falsify. *See, e.g.*, DISCR Case No. 90-0770 (July 16, 1992) at p. 3. 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 March 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 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 March 1998 reflects a plausible interpretation of the record evidence and, therefore, that finding is sustainable.

2. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. Applicant argues: (a) his criminal conduct occurred when he was a young man and fell in with the wrong people; (b) he is now married and has two children; (c) he has not been charged with any other criminal offenses; (d) his livelihood depends on having a security clearance; (e) he is willing to take a lie detector test to prove he is telling the truth; and (f) he would like to be given the opportunity to fill out another security questionnaire. The Board construes these arguments as raising the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

Applicant's arguments about his past criminal conduct are somewhat misplaced. The Administrative Judge did not base his adverse decision on Applicant's earlier criminal conduct. Rather, the Judge based his decision on Applicant's falsification of the security questionnaire in arch 1998, which formed the basis for the SOR issued to Applicant. Accordingly, Applicant's arguments about his past criminal conduct do not demonstrate the Judge erred.

Applicant's argument about the adverse consequences that an unfavorable security clearance decision would have does not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. In many 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 falsification of a security questionnaire in March 1998 are not negated or reduced by the fact that an unfavorable security clearance decision may have adverse effects on Applicant. 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 offer to undergo a lie detector test does not make the Administrative Judge's adverse decision arbitrary, capricious, or contrary to law. Even if Applicant's offer (which was made for the first time on appeal) had been made during the proceedings below, the Judge would have lacked any authority to direct that Applicant be given a polygraph test. Similarly, the Board cannot accept Applicant's offer because (a) the Board also lacks authority to direct that Applicant be given a polygraph test; and (b) the Board cannot consider new evidence on appeal.

Applicant's request to be given the opportunity to fill out another security questionnaire does not make the Administrative Judge's adverse decision arbitrary, capricious, or contrary to law. Applicant's falsification of the security questionnaire in March 1998 provides a rational basis for the Judge's adverse conclusions about Applicant's security eligibility. *See, e.g.*, ISCR Case No. 98-0621 (August 19, 1999) at pp. 3-4 (discussing security significance of

falsification). The negative security implications of Applicant's falsification of the security questionnaire would not be negated or diminished by submission of a corrected security questionnaire now.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's September 1, 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