

DATE: January 28, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0431

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Claude R. Heiny issued a decision, dated October 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 following issues: (1) whether the Administrative Judge erred by finding Applicant willfully falsified a security questionnaire; and (2) 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 June 29, 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 did not want a hearing in his case. 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 assigned to the Administrative Judge for disposition. The Judge issued a written decision, dated October 29, 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 Administrative Judge's adverse security clearance decision.

Appeal Issues

1. Whether the Administrative Judge erred by finding Applicant willfully falsified a security questionnaire. When Applicant executed a security questionnaire in August 1998, he denied that he had ever been charged with or convicted of any felony offense. In fact, Applicant had been charged with two counts of grand larceny, a felony, in February 1996. The Administrative Judge found that Applicant did not disclose those felony charges on the security questionnaire

because he was afraid he would not get a job with a defense contractor if he listed them. On appeal, Applicant contends he did not deliberately try to conceal his past felony charges from the government, and that he omitted them from the security questionnaire because: (a) "to my knowledge at that time I was never charged or convicted of a felony offense"; and (b) "I pleaded guilty to misdemeanor charges and I assumed that was correct."

The Administrative Judge had the opportunity to consider and weigh Applicant's differing statements about his state of mind and intentions when he executed the security questionnaire in August 1998. The Judge had the obligation to consider Applicant's varying statements in light of the record as a whole and decide whether Applicant's failure to disclose his felony charges was deliberate or not. There is sufficient record evidence (including one of Applicant's statements) to sustain the Judge's finding that Applicant intentionally omitted the felony charges when he executed the security questionnaire in August 1998.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Applicant also argues: (a) it is unfair for the Administrative Judge to hold against Applicant a crime that occurred about three years ago, which he did not commit; and (b) an adverse security clearance decision probably would result in Applicant not being able to complete an apprenticeship at a defense contractor. 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.

The Administrative Judge made a formal finding for Applicant with respect to the February 1996 criminal incident (SOR 2.a). A review of the decision below shows the Judge based his adverse conclusions about Applicant's security eligibility on Applicant's falsification of the security questionnaire in August 1998, not Applicant's involvement in the February 1996 criminal incident. Accordingly, Applicant's argument about the 1996 incident is moot.

Applicant's argument about the adverse consequences an unfavorable security clearance decision might have for him does not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. 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. 99-0355 (December 14, 1999) at p. 3. 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.

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). Falsification of a security questionnaire provides a rational basis for an adverse security clearance decision. *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). Applicant's falsification of a security questionnaire in August 1998 provides a rational basis for the Judge's adverse security clearance decision.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's October 29, 1999 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

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Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board