

DATE: January 21, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0456

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge John G. Metz, Jr., issued a decision, dated October 21, 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 June 30, 1999 to Applicant. The SOR was based on Criterion H (Drug Involvement) and Criterion E (Personal Conduct).

A hearing was held on September 30, 1999. The Administrative Judge issued a written decision, dated October 21, 1999, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Appeal Issue

Applicant does not challenge the Administrative Judge's findings about his history of purchase and use of marijuana over the last 30 years, including marijuana use within two weeks of the hearing. However, Applicant argues: (1) his pattern of marijuana use has not demonstrated any drug abuse within the meaning of Criterion H; (2) the Judge erred by concluding Applicant used marijuana "without regard to legality" because Applicant "was quite aware that his activities were misdemeanor crimes"; (3) the Judge erred by ignoring the record evidence that Applicant's social and occupational functioning has not been impaired by his possession and use of marijuana; (4) there is no record evidence that marijuana use would increase the possibility that classified information might be disclosed while Applicant was under the influence of marijuana; (5) the Judge ignored the evidence that it is in the interests of national security for the government to gain access to certain technology Applicant has developed; (6) Department Counsel failed to present

evidence that would warrant application of Criterion E; (7) the Judge erred by ignoring the evidence that Applicant has demonstrated personal, business and professional accomplishments that would be unlikely to be accomplished by anyone with questionable judgment, untrustworthiness, unreliability or an unwillingness to comply with rules and regulations; and (8) Department Counsel failed to demonstrate Applicant has ever failed to properly handle sensitive, private medical information that he handles on a daily basis. Applicant's arguments raise the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Applicant's history of marijuana use clearly and unequivocally falls within the plain meaning of Criterion H. Drug abuse "is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Directive, Enclosure 2 at page 2-16. Applicant's drug abuse argument is groundless.

Applicant's argument about the misdemeanor nature of his possession and use of marijuana also lacks merit. Given the record evidence of Applicant's deliberate violations of misdemeanor drug laws over a period of many years, it was not arbitrary or capricious for the Administrative Judge to conclude Applicant's drug-related conduct failed to demonstrate a due regard by Applicant for conforming his conduct to the requirements of applicable law.

Applicant's argument about his social and occupational functioning does not demonstrate the Administrative Judge erred. First, drug abuse can pose a security risk in a variety of ways. *See, e.g., AFGE Local 1533 v. Cheney*, 944 F.2d 503, 506 n. 6 (9th Cir. 1991). Second, security clearance determinations can include consideration of an applicant's off-duty conduct. *See, e.g., ISCR Case No. 99-0068* (November 30, 1999) at p. 6. Drug abuse does not lose its negative security significance merely because it has not led to a deterioration or collapse in an applicant's ability to function, or because it occurs during off-duty hours. Applicant's history of marijuana use over a period of many years provided the Judge with a rational basis for his expressed doubts about Applicant's suitability for access to classified information. This analysis also applies to Applicant's seventh argument, which is little more than a variation of his argument about social and occupational functioning.

Applicant's fourth and eighth arguments are interrelated. The government is not required to demonstrate a specific, quantifiable level of risk that a given applicant may mishandle classified information when under the influence of illegal drugs such as marijuana. *See, e.g., ISCR Case No. 98-0761* (December 27, 1999) at p. 4 (noting security clearance decisions are not an exact science). Furthermore, these arguments by Applicant ignore the fact that involvement with illegal drugs has negative security implications that are not limited to the security risk posed when an applicant is actually under the influence of illegal drugs.

Applicant's sixth argument also fails to demonstrate the Administrative Judge erred. The Judge had a rational basis for concluding Applicant's history of marijuana abuse demonstrated poor judgment within the meaning of Criterion E.

The Administrative Judge was not required to make a favorable decision based on the evidence cited by Applicant concerning the technology he has developed. The value of Applicant's technology is irrelevant to a determination whether Applicant has demonstrated the high degree of judgment, reliability, and trustworthiness that must be expected of persons granted access to classified information. *See, e.g., ISCR Case No. 98-0424* (July 16, 1999) at p. 3.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's October 21, 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