

DATE: May 19, 2000

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 99-0524

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Richard A. Cefola issued a decision, dated December 7, 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.

The 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 brief alleges no specific errors with regard to the Administrative Judge's findings and conclusions in the decision below. The Board construes Applicant's appeal brief as presenting the issue of whether the Administrative Judge's adverse decision was arbitrary, capricious or contrary to law.

### **Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated August 11, 1999 to Applicant. The SOR was based on Criterion J (Criminal Conduct) and Criterion E (Personal Conduct). Applicant did not request a hearing. The government submitted a File of Relevant Material (FORM), which contained the government's documentary evidence, to the Applicant on October 22, 1999. Applicant made a written submission in response the FORM on November 24, 1999. Subsequently, the Administrative Judge issued a decision 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 appeal from that adverse decision.

### **Appeal Issue**

Whether the Administrative Judge's adverse decision was arbitrary, capricious or contrary to law. Between 1988 and 1998 Applicant had been arrested and in some instances convicted for numerous violations of military and civilian criminal law. (1) Applicant also provided a false statement to government investigators in 1998 when he was asked to provide the particulars of one of his criminal incidents. The Administrative Judge concluded that Applicant's history of criminal acts and his incident of falsification provided an adequate basis for the denial of his security clearance. On appeal Applicant asserts the following: (1) he has been working for the military and defense contractors for over 11

years and he has never put the security of the military or the nation at risk; (2) it has been two years since the latest incident (unspecified), at the time he was under stress and he thought he was protecting his family; (3) he has learned from these incidents, paid his dues, made efforts to atone for his actions and fulfilled all the requirements of his probation; and (4) he has completed a domestic violence education program, has grown up and now accepts responsibility for his family. The Board construes these various assertions as asserting that the Administrative Judge's decision was arbitrary, capricious and contrary to law.

Of the factors cited by Applicant the Judge made specific mention of only the completion of the domestic violence education program in the body of his decision. The mere fact that the Judge did not discuss other possible facts in mitigation does not convince the Board that the Judge failed to give due consideration to evidence that is, at least, arguably mitigating. There is no presumption of error below and there is no requirement that the Judge discuss every piece of evidence available from the record in his decision. By mentioning the completion of the domestic violence education program the Judge has highlighted the most potent and objectively verifiable mitigation evidence. Completion of such a program is more probative than Applicant's statements that he has matured and has learned from his past mistakes.

Notwithstanding the presence of some mitigation in the record, the Judge was required to weigh that evidence against Applicant's considerable history of criminal conduct and his lack of candor with the government. Considering the record as a whole, the Judge's weighing of the evidence, both favorable and unfavorable, was not arbitrary, capricious or contrary to law.

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 clearance decisions are not an exact science, but rather predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-529 (1988). Given Applicant's overall history of misconduct, the Board concludes that the Administrative Judge's analysis reflects a plausible interpretation of the record evidence and that his adverse security clearance decision is sustainable.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error. Accordingly, the Board affirms the Administrative Judge's December 7, 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 SOR contained eleven separate allegations of criminal conduct. The Administrative Judge found in Applicant's favor on five of those allegations and in the case of SOR allegation 1k the Judge did not make any formal finding. Allegation 1k referenced Applicant's single act of falsification, alleged in paragraph 2 of the SOR, and alleged it as a violation of the criminal law. The five favorable findings are not at issue on appeal. Regarding the missing formal finding, the Board notes that the Judge specifically commented on the act of falsification as being a violation of federal criminal law in the body of his decision. Consequently, the omission in the formal findings did not affect the outcome of the case.