

DATE: June 5, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0525

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

-----, Personal Representative

Administrative Judge Jerome H. Silber issued a decision, dated November 30, 1999, in which he concluded that 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 presents the following issues: 1. Were the Administrative Judge's findings and conclusions supported by the record evidence and mutually consistent; and 2. Was the Administrative Judge's decision arbitrary, capricious or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons to Applicant based on Criterion E (Personal Conduct) and Criterion J (Criminal Conduct). Applicant requested a hearing which was held on October 28, 1999. On November 30, 1999 the Administrative Judge issued a decision in which he concluded that 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 of that unfavorable decision.

Appeal Issues ⁽¹⁾

1. Were the Administrative Judge's findings and conclusions supported by the record evidence and mutually consistent. Applicant argues that the Administrative Judge's findings that Applicant committed multiple deliberate falsifications are not supported by the record evidence. The Board is not persuaded by Applicant's argument. The record evidence supports findings that Applicant repeatedly gave to the federal government information she knew to be false regarding her employment history and residential history. The most recent such falsification was in June of 1998, about 15 months prior to the hearing. The Applicant has failed to demonstrate that the Judge's findings and conclusions are not supported by the record evidence.

Applicant takes issue with the Administrative Judge's conclusion that "[t]he likelihood of a continuation of such deceptive behavior in the future is considerable." It is well established that security clearances 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, 528-9 (1988). Furthermore, the Judge must take into consideration whether there is a likelihood that an applicant may continue or repeat misconduct. Directive, Enclosure 2, Section E2.2.1.9. Given the record evidence in this case, the Judge's conclusion is not arbitrary, capricious, or contrary to law.

Applicant juxtaposes several quotations from page 7 of the Administrative Judge's decision apparently to advance an argument that the Administrative Judge's findings and conclusions are inconsistent. There is no inconsistency. In the passage of the decision cited by Applicant, the Judge indicates why the numerous deliberate falsifications dictate a negative security clearance decision. At the same time he states that an isolated security violation alleged in the same paragraph of the SOR reflects only negligent conduct on the part of the Applicant and does not provide a sufficient basis for security clearance denial under Criterion E. Applicant has failed to demonstrate that the Judge erred.

2. Was the Administrative Judge's decision arbitrary, capricious or contrary to law. Applicant contests the use of past errors in judgment to adjudicate her current and future status. Further she requests that the Board quash the records of this case to prevent their use in the future to the detriment of her career. The Board construes these arguments as raising the issue of whether the Judge's adverse security clearance decision is 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). Falsification of a security questionnaire or a written statement given to a federal investigator demonstrates poor judgment, untrustworthiness and unreliability that clearly has negative implications for an applicant's suitability for a security clearance. *See, e.g.*, ISCR Case No. 99-0473 (May 12, 2000). As noted earlier, the record evidence supports the Judge's findings that Applicant deliberately made multiple false statements to the government. The Judge's findings regarding Applicant's repeated falsifications, most recently in 1998, provide a rational basis for the Judge's adverse conclusions regarding Applicant's suitability for a security clearance. Considering the record evidence as a whole the Administrative Judge's findings and conclusions are not arbitrary, capricious or contrary to law.

Applicant requests the Board have Applicant's file quashed. The Board does not have authority to quash Applicant's records.

Conclusion

The Applicant has failed to demonstrate error below. Therefore the Administrative Judge's decision is affirmed.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Concurring Opinion of Administrative Judge Michael Y. Ra'anan

I concur with the majority in all aspects of the decision save one. I understand Applicant's appeal to challenge the Administrative Judge's language regarding the likelihood of her repeating her deceptive behavior. While the Administrative Judge's conclusion is clearly permitted, I believe that his choice of words was unnecessarily harsh.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found for Applicant on allegations in subparagraphs 1.i. and 1.k. of the SOR. Those findings are not at issue on appeal.