

DATE: August 29, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0712

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey-Anderson issued a decision, dated April 27, 2000, in which she 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 there are grounds for granting Applicant a secret clearance (as opposed to top secret) to Applicant; and (2) whether the 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) to Applicant dated January 11, 2000. The SOR was based on Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). The Applicant responded to the SOR in writing on January 26, 2000 and indicated he wanted to have the case determined on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM) on February 28, 2000. The Applicant received the FORM on March 9, 2000 and submitted a response to it on March 24, 2000.

The case was then assigned to the Administrative Judge for disposition. The Judge issued a written decision, dated April 27, 2000. In the decision she 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 from that adverse decision.

Appeal Issues

1. Whether there are grounds for granting a secret clearance to Applicant. For the first time on appeal, Applicant describes some procedural history concerning his security clearance applications in support of his assertion that he should be granted at least a secret level clearance. He claims that he applied for and received a secret level clearance in 1997 and then applied for an upgrade of that clearance to the top secret level in 1998. He claims that the same information he provided in his 1997 application was provided again in his 1998 application. Decrying this perceived

disparity of result, Applicant states that since the investigation conducted pursuant to his secret clearance application did not cause the revocation of that clearance, the same information does not provide a basis for the revocation of his clearance now.

Other than the date of the granting of his initial secret clearance, none of the factual assertions made by Applicant in his argument are supported by record evidence. Applicant's bare assertions on appeal concerning the state of the government's knowledge of his falsifications during the first investigation do not provide any meaningful evidence as to the actual conduct of the government in 1997. The record evidence does not reveal what the government knew about the Applicant in 1997.

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

Applicant claims (1) that he would not do anything "that would corrupt the country or myself" or jeopardize his "hard-working" life; (2) he knew what he did was wrong but his actions do not constitute national threats; and (3) he is remorseful and deserving of another chance. The Board construes these assertions as raising the issue of whether the Administrative Judge's decision was 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 are 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, 528-29 (1988). The federal government need not wait until an applicant actually mishandles or otherwise fails to safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). All that is required is proof of facts and circumstances that indicate an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See, e.g.*, ISCR Case No. 98-0188 (April 29, 1999) at p. 4. Given Applicant's multiple falsifications, the Administrative Judge had a rational basis for her adverse security clearance decision.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's April 27, 2000 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