

DATE: March 22, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0339

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Claude R. Heiny issued a decision, dated November 17, 2000, in which he concluded it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Department Counsel 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.

Department Counsel's appeal presents the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law because he failed to properly apply pertinent provisions of the Adjudicative Guidelines.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 5, 2000 to Applicant. The SOR was based on Guideline G (Alcohol Consumption). A hearing was held on September 27, 2000.

The Administrative Judge issued a written decision, dated November 17, 2000, in which he concluded it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Department Counsel's appeal from the Judge's favorable decision.

Appeal Issue

The Administrative Judge made findings about Applicant's involvement in three alcohol-related incidents that occurred in December 1962, February 1971, and September 1998. The Judge evaluated Applicant's overall history of alcohol consumption and concluded that the three alcohol-related incidents did not establish a pattern because they were not related and not sufficiently close in time. The Judge concluded Applicant's drinking (apart from the three alcohol-related incidents) did not demonstrate alcohol abuse because there has been no diagnosis of alcohol abuse or alcohol dependence, and no requirement that Applicant abstain from all alcohol.

On appeal, Department Counsel contends: (1) the record evidence does not support the Administrative Judge's application of Alcohol Consumption Mitigating Condition 1; and (2) it was arbitrary, capricious, and contrary to law for

the Judge to fail to apply Alcohol Consumption Disqualifying Condition 5.

(1) Department Counsel contends the Administrative Judge erred by applying Alcohol Consumption Mitigating Condition 1 ("The alcohol related incidents do not indicate a pattern"). Department Counsel argues that Applicant's three alcohol-related incidents, viewed together, demonstrate a pattern, and stresses the severity of the September 1998 incident and Applicant's continued drinking.

The Directive does not define the word "pattern." When faced with a word or phrase in the Directive that is not defined, the undefined word or phrase must be construed or interpreted in a reasonable manner. *See, e.g.*, ISCR Case No. 99-0480 (November 28, 2000) at p. 8. In deciding whether alcohol-related incidents indicate a pattern, it is reasonable for an Administrative Judge to consider the passage of time between the incidents. *Cf.* Directive, Section 6.3.2 ("Frequency and recency of the conduct"); Directive, Item E2.2.2.1.3 ("The frequency and recency of the conduct"). The severity of Applicant's September 1998 alcohol-related incident is a relevant consideration in evaluating Applicant's case (Directive, Section 6.3.1; Directive, Item E2.2.1.1), but it is irrelevant to a determination whether the September 1998 incident forms part of a pattern. Furthermore, the record evidence of Applicant's continued drinking after the September 1998 incident is not probative of a pattern because there has been no showing that such drinking has been abusive. Given the record evidence in this case, the Board declines to hold that, as a matter of law, the Judge was compelled to conclude Applicant's alcohol-related incidents indicated a pattern that precluded the application of Alcohol Consumption Mitigating Condition 1.

(2) Department Counsel contends the Administrative Judge erred by not applying Alcohol Consumption Disqualifying Condition 5 ("Habitual or binge consumption of alcohol to the point of impaired judgment"). Department Counsel argues the record evidence shows Applicant indulged in binge drinking that resulted in the three alcohol-related incidents and, therefore, the Judge should have applied Alcohol Consumption Disqualifying Condition 5.

There is no dispute that Applicant was intoxicated in connection with each of the three alcohol-related incidents alleged in the SOR. Indeed, the Administrative Judge properly concluded those three alcohol-related incidents raised security concerns under Guideline G. *See, e.g.*, ISCR Case No. 99-0393 (February 25, 2000) at p. 2 (noting security significance of alcohol abuse). Although those three incidents demonstrated alcohol abuse by Applicant, there is no record evidence that indicates the three incidents involved binge drinking. Even if the Board were to accept, solely for the purposes of deciding this appeal, the dictionary definition of "binge" relied on by Department Counsel, the record evidence is insufficient to warrant characterizing Applicant's consumption on those three occasions as "binge drinking." Accordingly, the record evidence in this case did not require the Judge to apply Alcohol Consumption Disqualifying Condition 5. Given the record evidence in this case, Department Counsel's argument to the contrary lacks merit.

Conclusion

There is no presumption of error below and the appealing party has the burden of demonstrating such error. Department Counsel's appeal contentions fail to demonstrate the Administrative Judge acted in a manner that is arbitrary, capricious, or contrary to law. Accordingly, the Board affirms the Judge's November 17, 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