

DATE: June 19, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0382

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Wilford H. Ross issued a decision, dated February 20, 2001, 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 following issues: (1) whether the Administrative Judge's findings are supported by substantial record evidence; and (2) whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated July 26, 2000 to Applicant. The SOR was based on Guideline G (Alcohol Consumption). A hearing was held on November 16, 2000. The Administrative Judge issued a written decision, dated February 20, 2001, 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 Applicant's appeal from the Judge's adverse decision.

Administrative Judge's Findings and Conclusions

Applicant retired from the United States military in 1994. At the time of retirement, Applicant suffered from several medical conditions (including depression and anxiety) for which he has continued to receive treatment. For several years after retirement, Applicant had difficulty finding permanent employment. In mid-1998, Applicant had additional stress due to a serious family-related problem.

Applicant began to drink alcohol to excess as a way to relieve stress. Applicant drank to excess for about a year. Applicant realized he was drinking too much and requested help from the Veterans Administration. In December 1999 and October 2000, Applicant's treating psychiatrist indicated Applicant had a diagnosis of "Alcohol Dependence - In Partial Remission," noting that the reason for the "in partial remission" qualification was the fact Applicant was

continuing to drink on an episodic basis. In response to a DoD questionnaire, Applicant's treating psychiatrist stated Applicant does not have a condition that could impair his judgment with regards to safeguarding classified information "unless he restarts alcohol use," also stated "[a]t this time [Applicant] is sober," and indicated she does not believe Applicant is a security risk.

Applicant's treating psychiatrist recommended Applicant stop drinking alcohol. Applicant continues to drink alcohol, but testified he does so at a moderate pace and no longer uses alcohol as a way to combat his anxiety and depression. There is no evidence that Applicant's drinking has ever resulted in any alcohol-related driving offenses or work problems.

Applicant has been with his present employer since January 1998. His evaluations show that he is viewed as an outstanding employee who is reliable and shows good judgment. The security officer at Applicant's place of employment has known him very well for about 14 years. The security officer believes Applicant is a very trustworthy person and believes Applicant should retain a security clearance.

Department Counsel met its burden of proof under Guideline G by demonstrating Applicant has used alcohol to excess in the recent past and Applicant has been diagnosed as alcohol dependent by a credentialed medical professional.

The favorable evidence of Applicant's employment record and his past holding of a security clearance, and lack of any evidence that Applicant's drinking has ever resulted in alcohol-related incidents, is not sufficient to overcome the government's case against Applicant because he has been diagnosed as alcohol dependent and he continues to drink alcohol against the recommendation of his treating physician.

Appeal Issues

1. Whether the Administrative Judge's findings are supported by substantial record evidence. Applicant argues: (a) the diagnosis of alcohol dependence could be incorrect because the physician had only "limited input and incomplete information" and the diagnosis was made about three years ago; (b) during the hearing, the Special Agent who testified gave inaccurate answers to some questions, was tentative in some of his answers, and failed to conduct a more thorough investigation; and (c) the Special Agent "escalated [Applicant's statements] out of proportion and made an issue where there is no issue." The Board construes these arguments as challenging the Administrative Judge's findings about the facts and circumstances of Applicant's alcohol consumption.

On appeal, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge." Directive, Additional Procedural Guidance, Item E3.1.32.1. The presence of conflicting record evidence does not diminish a Judge's fact-finding responsibility. When the record contains conflicting evidence, the Judge must carefully weigh the evidence in a reasonable, common sense manner and make findings that reflect a reasonable interpretation of the evidence that takes into account all the record evidence. Accordingly, the Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings. *See, e.g.*, ISCR Case No. 99-0205 (October 19, 2000) at p. 2.

(a) Given the record evidence in this case, it was not arbitrary, capricious, or contrary to law for the Administrative Judge to give weight to the diagnosis of Applicant as alcohol dependent and to rely on that diagnosis in making his security clearance decision. Applicant's argument against the validity of the diagnosis fails to demonstrate the Administrative Judge erred.

(b) Applicant correctly notes the Special Agent gave an incorrect name of a doctor in response to one question at the hearing. The Administrative Judge was not required to reject the Special Agent's testimony in its entirety merely because he failed to remember the correct name of a physician in response to one question. Nor was the Judge required to reject or discount the Special Agent's testimony merely because the Special Agent (I) qualified some of his answers; (ii) indicated some uncertainty about information he received from other persons about Applicant; and (iii) relied on telephone calls, instead of face to face meetings, to interview some persons during the investigation. More important, a

review of the record below persuades the Board that the Judge's findings about Applicant's alcohol consumption do not turn on the Special Agent's testimony. Even if the Special Agent's testimony were entitled to be given only limited weight, there is sufficient record evidence independent of the Special Agent's testimony that supports the Judge's findings about Applicant's alcohol consumption.

(c) During the hearing, Applicant raised the issue of whether his written statement (Government Exhibit 2) was prepared accurately by the Special Agent. The Administrative Judge had the benefit of hearing Applicant's testimony and the testimony of the Special Agent in deciding what weight to give to Government Exhibit 2. Considering the record as a whole, it was not arbitrary, capricious, or contrary to law for the Judge to conclude Government Exhibit 2 accurately reflected Applicant's statements to the Special Agent in May 1999.

A review of the record below persuades the Board that the Administrative Judge's findings about Applicant's alcohol consumption reflect a reasonable, plausible interpretation of the record evidence. Applicant's arguments to the contrary fail to demonstrate the Judge erred.

2. Whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law. Applicant also argues: (a) Department Counsel's closing argument is contradictory and contains statements favorable to Applicant; (b) the record evidence shows his alcohol consumption has not had any negative effects on his job responsibilities; (c) his security officer presented significant favorable evidence during the hearing; (d) his military record weighs in his favor; (e) he has never been involved in any incident that shows he is unreliable or at risk of mishandling classified information; (f) he has no criminal record and has not been involved in any alcohol-related incidents; (g) his job performance is good and he has not been terminated from a job; and (h) his drinking is under control. The Board construes these arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

Applicant's ability to cite favorable record evidence is not sufficient to demonstrate the Administrative Judge erred by making an adverse security clearance decision. A Judge must consider the record evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. Considering the record as a whole, the Board is not persuaded that the favorable evidence presented by Applicant is of such weight as to compel the Judge to make a favorable security clearance decision. Applicant's arguments fail to demonstrate the Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law.

Applicant's favorable security record weighs in his favor, but it did not preclude the Administrative Judge from making an adverse security clearance decision. The federal government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can make an adverse security clearance decision. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Applicant's alcohol abuse raises security concerns even if it occurred during off-duty hours. *See, e.g., Cole v. Young*, 351 U.S. 536, 550 n.13 (1956); *Croft v. Department of Air Force*, 40 M.S.P.R. 320, 321 n.1 (1989). Accordingly, the absence of any evidence that Applicant's drinking adversely affected his job performance did not preclude the Administrative Judge from making an adverse decision.

Applicant's lack of a criminal record does not demonstrate the Administrative Judge erred. "Even if an applicant has not engaged in other conduct that has more serious negative security significance, the Judge still has the obligation to evaluate the security significance of the conduct the applicant did engage in." ISCR Case No. 99-0254 (February 16, 2000) at p. 3. Applicant's lack of a criminal record does not negate or diminish the negative security significance of his history of alcohol consumption.

Given the record evidence of Applicant's alcohol abuse, the diagnosis of Applicant as alcohol dependent, and Applicant's continued drinking of alcohol against the recommendation of his treating physician, it was not arbitrary or capricious for the Administrative Judge to conclude Department Counsel had demonstrated a case against Applicant under Guideline G. Furthermore, the Judge gave a rational explanation for why he concluded Applicant had failed to meet his burden of demonstrating reform and rehabilitation or changed circumstances sufficient to warrant a favorable security clearance decision. Applicant's appeal arguments fail to demonstrate the Judge's analysis and conclusions are arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's February 20, 2001 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