DATE: September 26, 2001

In Re:

SSN: -----------

Applicant for Security Clearance

ISCR Case No. 00-0623

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Jerome H. Silber issued a decision, dated June 8, 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 erred by finding Applicant falsified a security questionnaire he completed in March 1999; and (2) whether the Administrative Judge erred by concluding Applicant had abused alcohol after 1996.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated February 15, 2001 to Applicant. The SOR was based on Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline G (Alcohol Consumption).

Applicant submitted an answer to the SOR, in which he indicated "I wish to have a decision without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant, who submitted a response to the FORM. The case was assigned to the Administrative Judge for determination. The Judge issued a written decision, dated June 8, 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 Administrative Judge's adverse decision.

Appeal Issues

1. Whether the Administrative Judge erred by finding Applicant falsified a security questionnaire he completed in March 1999. Applicant completed a security questionnaire in March 1999. In response to question 23 of the questionnaire, Applicant listed a September 1996 alcohol-related incident, but did not list other alcohol-related incidents

in which he was involved that occurred in March 1980, December 1980, September 1981, and June 1988. The Administrative Judge considered Applicant's explanation for not listing all his alcohol-related incidents and found it to be not credible. On appeal, Applicant says he is not a liar, asserts he did not list all his alcohol-related incidents because he "did not read the question close enough," and contends he was not trying to hide his criminal record. Applicant's arguments fail to demonstrate the Administrative Judge erred.

The Administrative Judge must weigh the record evidence and make findings of fact. *See* Directive, Additional Procedural Guidance, Item E3.1.25. When a party challenges a Judge's findings of fact, 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." Directive, Additional Procedural Guidance, Item E3.1.32.1.

In this case, the Administrative Judge had to consider Applicant's explanation for not disclosing all his alcohol-related incidents in response to question 23 of the security questionnaire. The Judge was not required, as a matter of law, to accept Applicant's explanation. *See, e.g.*, ISCR Case No. 99-0228 (March 12, 2001) at pp. 3-4 (Judge is not required to accept an applicant's explanation merely because it is unrebutted); ISCR Case No. 00-0233 (February 14, 2001) at p. 4 (intent to falsify can be shown by circumstantial evidence despite applicant's denial of intent to falsify). The Judge decided that Applicant's explanation was not credible and concluded Applicant's failure to disclose all his alcohol-related incidents constituted a falsification. Applicant's appeal arguments fail to set forth any legal or factual basis for the Board to conclude the Judge's finding of falsification is not sustainable.

2. <u>Whether the Administrative Judge erred by concluding Applicant had abused alcohol after 1996</u>. Applicant does not challenge the Administrative Judge's findings about his history of episodic alcohol abuse before 1997. However, Applicant argues: his last alcohol-related incident occurred almost five years ago; he has changed his lifestyle since then; he reduced the amount of alcohol he drank after the September 1996 alcohol-related incident; and he has abstained from alcohol in the past five months. The Board construes Applicant's arguments as raising the issue of whether the Judge erred by concluding Applicant had abused alcohol after the September 1996 incident.

Under Guideline G (Alcohol Consumption), the federal government is concerned about the security risks posed by alcohol abuse. Without evidence indicative of alcohol abuse, the mere fact that an applicant drinks alcohol does not raise security concerns under Guideline G. In this case, there is evidence that Applicant drank alcohol after the September 1996 incident. However, there is insufficient record evidence to support the Administrative Judge's inference that Applicant's drinking after the September 1996 incident constituted alcohol abuse.

The Administrative Judge's error concerning Applicant's drinking does not warrant remand or reversal. The Judge's sustainable findings and conclusions about Applicant's falsification of the security questionnaire provide a sufficient basis for his adverse security clearance decision.

Conclusion

Applicant has failed to demonstrate error below that warrants remand or reversal. Accordingly, the Board affirms the Administrative Judge's adverse security clearance decision.

<u>Signed: Emilio Jaksetic</u>

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

<u>Signed: Michael Y. Ra'anan</u>

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board