

DATE: May 7, 2002

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-02860

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

William S. Fields, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Darlene Lokey Anderson issued a decision, dated January 14, 2002, 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 raises the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

#### **Procedural History**

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated July 12, 2001. The SOR was based on Guideline G (Alcohol Consumption). Applicant submitted an answer to the SOR in which he "I do not wish to have a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant and he was provided an opportunity to respond to the FORM and submit additional information for consideration in his case. After the FORM was prepared, Applicant asked for a hearing in his case. Applicant's request for a hearing was granted. Applicant later withdrew his request for a hearing and asked that an administrative determination be made in his case "based upon the papers as submitted."

The case is before the Board on Applicant's appeal of the Administrative Judge's January 14, 2002 adverse decision.

#### **Scope of Review**

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. *See* Directive, Additional Procedural Guidance, Item E3.1.32. *See, e.g.*, ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (discussing reasons why party must raise claims of error with specificity).

When an Administrative Judge's factual findings are challenged, 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 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 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.

When a challenge to an Administrative Judge's rulings or conclusions raises a question of law, the Board's scope of review is plenary. *See* DISCR Case No. 87-2107 (September 29, 1992) at pp. 4-5 (citing federal cases).

### Appeal Issue

Applicant's appeal brief contains some factual assertions about his situation that go beyond the record evidence below. Those assertions constitute new evidence, which the Board cannot consider. Directive, Additional Procedural Guidance, Item E3.1.29. Furthermore, Applicant waived his right to a hearing and did not submit a response to the FORM. Applicant failed to take advantage of the opportunity to submit information for consideration in his case. Applicant cannot fairly challenge the Administrative Judge's decision based on his proffer of new evidence. The Board will consider only those portions of Applicant's appeal brief that do not rely on new evidence.

On appeal, Applicant argues: (1) an adverse security clearance decision could jeopardize his employment; (2) he has never had a security violation, and alcohol has never been an issue with his handling of classified information; (3) he has had only two alcohol-related incidents during his entire lifetime; (4) he voluntarily entered an alcohol treatment program in 1987 and completed it; (5) he expects to complete soon the three-year probation associated with a 1998 driving under the influence incident; (6) his alcohol-related incidents were isolated, far apart in years, and do not indicate a pattern; (7) there is no indication of any recent alcohol-related problems; and (8) an adverse security clearance is unwarranted. The Board construes these arguments as raising the issue of whether the Administrative 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. The adverse effect that an unfavorable security clearance decision might have on Applicant's employment is irrelevant to determining whether it is clearly consistent with the national interest to grant or continue a security clearance for him. [\(1\)](#)

A history of alcohol abuse raises security concerns because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. Furthermore, the federal government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke access to such information. [\(2\)](#) Accordingly, the absence of any evidence that Applicant's alcohol abuse caused a security violation did not preclude the Administrative Judge from considering the security risk posed by Applicant's overall history of alcohol abuse.

Although Applicant was involved in only two alcohol-related incidents (only one of which resulted in criminal charges), the record evidence shows that he has had a long history of episodic alcohol abuse. Alcohol abuse has security significance whether it occurs during off-duty hours or even if it does not result in incidents involving law enforcement authorities. Furthermore, given the record evidence in this case, the Administrative Judge had a rational basis to conclude Applicant abused alcohol after he completed an alcohol treatment program in 1987. It was not arbitrary or capricious for the Judge to take into account Applicant's post-1987 alcohol abuse when weighing the significance of Applicant's completion of the alcohol treatment program in 1987.

The Administrative Judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation. Given those doubts, the Judge properly resolved them in favor of the national security. [\(3\)](#)

Considering the record evidence as a whole, Applicant's appeal arguments fail to demonstrate the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

## Conclusion

Applicant has failed to demonstrate error below. Accordingly, the Board affirms the Administrative Judge's adverse security clearance 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

1. *See, e.g.*, ISCR Case No. 00-0593 (May 14, 2001) at p. 4.
2. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).
3. *See, e.g.*, ISCR Case No. 00-0055 (April 10, 2001) at p. 3.