

DATE: April 1, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12949

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Claude R. Heiny issued a decision, dated December 6, 2002, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed.

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 issue of whether the Administrative Judge's security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board affirms the Administrative Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated March 15, 2002. The SOR was based on Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

A hearing was held on August 28, 2002. The Administrative Judge issued a written decision, dated December 6, 2002, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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 also* 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 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 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

The Administrative Judge made findings of fact about Applicant's history of alcohol abuse, numerous citations for traffic violations, and criminal conduct in 1997, 1998, 1999, and 2000. On appeal, Applicant does not challenge the Judge's findings of fact. Rather, Applicant asserts that he has completed required probation, and that he has not been in trouble since then except for a speeding ticket for which he was required to perform community service. The Board construes Applicant's appeal statements as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

As noted earlier in this decision, there is no presumption of error. Because Applicant does not challenge any of the Administrative Judge's findings of fact, the Board need not review those findings in order to decide this appeal.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. Given the Administrative Judge's findings of fact about Applicant's history of episodic alcohol abuse, numerous traffic violations, and criminal conduct, the Judge had a rational basis for his adverse conclusions about Applicant's judgment, reliability and trustworthiness under Guidelines E, G, and J.

To the extent that Applicant's appeal statements can be construed as making a claim that he has demonstrated reform and rehabilitation, the Board concludes Applicant has failed to demonstrate the Judge erred. The Judge had to consider the record evidence as a whole, both favorable and unfavorable, and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. The Judge considered the facts and circumstances of Applicant's alcohol abuse, traffic violations, and criminal conduct and weighed them against the evidence that Applicant presented to support his claim that he had reformed and rehabilitated himself. The Judge concluded that the favorable evidence Applicant presented was not enough to demonstrate reform, rehabilitation, or changed circumstances sufficient to warrant a favorable security clearance decision. Considering the record as a whole, the Board concludes the Judge's weighing of the record evidence was not 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 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: Christine M. Kopocis

Christine M. Kopocis

Administrative Judge

Member, Appeal Board