

DATE: January 3, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-13906

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

Administrative Judge Joseph Testan issued a decision, dated September 2, 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 adverse 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 February 6, 2002. The SOR was based on Guideline G (Alcohol Consumption).

Applicant submitted an answer to the SOR, in which he stated "I wish to have determination made without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant, and he was given an opportunity to submit a response to the FORM. No response to the FORM was received from Applicant.

The case was then assigned to the Administrative Judge for consideration. The Judge issued a written decision, dated September 4, 2002, 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.

### **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

On appeal, Applicant does not challenge the Administrative Judge's findings of fact about his history of alcohol abuse during the period 1985-2000 (including alcohol-related driving incidents in 1995 and 1999) and his continuation of drinking. Rather, Applicant asserts: (a) the quality of his personal and professional life has improved; (b) he is a dedicated employee who has never done anything to jeopardize the national security; (c) he would be unable to work effectively without a security clearance; and (d) he is a patriotic, trustworthy U.S. citizen who would like to continue to perform his job. The Board construes Applicant's assertions 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 below. Because Applicant does not challenge the Administrative Judge's findings about his history of alcohol abuse, the Board need not review those findings.

Applicant's assertion about the quality of his personal and professional life goes beyond the record evidence below. As such, it constitutes new evidence, which the Board cannot consider on appeal. The Board notes that Applicant had the opportunity to present evidence for consideration by the Administrative Judge after he received the FORM, but he did not submit any such evidence. Applicant cannot fairly seek to overturn the Judge's decision based on information that he did not submit for consideration by the Judge.

Applicant's assertion that he has never done anything to jeopardize national security fails to demonstrate the Administrative Judge erred. The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Security clearance decisions are not limited to consideration of an applicant's job performance. Indeed, an applicant's off-duty conduct can be considered in evaluating the applicant's security eligibility. *See, e.g.*, ISCR Case No. 00-0741 (October 9, 2001) at pp. 3-4. Furthermore, the federal government need not wait until an applicant commits a security violation before it can deny or revoke access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Accordingly, the Judge's adverse decision is not rendered arbitrary, capricious, or contrary to law because Applicant's history of alcohol abuse occurred during off-duty hours and did not result in any security violations.

Alcohol abuse poses a security risk because it raises the potential for deliberate or inadvertent disclosure of classified information while an applicant is under the influence of alcohol. *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). Applicant asserted, in his answer to the SOR, that he did not have contact with classified documents and he was "just a carpenter that works and remodels classified areas." Even if Applicant does not require access to classified documents to perform his duties, having access to classified areas places him in a position of having knowledge of, and access to, sensitive matters that require protection no less than that accorded to classified documents. *See Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183-184 (D.C. Cir. 1960)(discussing how security includes more than just the control of classified documents), *aff'd*. 367 U.S. 886 (1961). Alcohol abuse raises the potential for deliberate or inadvertent compromise of controlled access to a classified area or deliberate or inadvertent disclosure of knowledge concerning the classified area. Accordingly, Applicant's history of alcohol abuse poses no less a security risk even if he does not require access to classified documents to perform his duties. In this case, the Administrative Judge's unchallenged findings about Applicant's history of alcohol abuse provide a rational basis for the Judge's adverse conclusions about Applicant's

security eligibility.

Even if an unfavorable security clearance decision were to have an adverse effect on Applicant's employment situation, such a result would not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. "An applicant is not made more or less suitable for a security clearance based on how a security clearance decision might affect the applicant." ISCR Case No. 00-0593 (May 14, 2001) at p. 4. The negative security significance of Applicant's overall history of alcohol abuse is not reduced or diminished by the possibility that an unfavorable security clearance decision might have adverse consequences for his employment situation.

### **Conclusion**

Because Applicant has failed to demonstrate error below, 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