

DATE: December 30, 1996

In Re:

SSN: -----

Applicant for Security Clearance

DOHA Case No. 96-0031

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Chief Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Darlene Lokey Anderson issued a decision, dated August 30, 1996, 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 presents the following issues: (1) whether the Administrative Judge erred by finding Applicant was diagnosed as alcohol dependent; and (2) 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 a Statement of Reasons (SOR), dated January 22, 1996, to Applicant. The SOR was based on Criterion G (alcohol consumption).

A hearing was held on May 30, 1996. The Administrative Judge subsequently issued a written decision in which she 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 that adverse decision.

Appeal Issues

1. Whether the Administrative Judge erred by finding Applicant was diagnosed as alcohol dependent. The Administrative Judge found Applicant had a history of alcohol abuse during the periods 1981-1991 and 1994 (including alcohol-related traffic incidents in 1981, 1986, 1987, 1991 and 1994), and was diagnosed as alcohol dependent during alcohol counseling in 1995. On appeal, Applicant does not challenge the Judge's overall findings about his history of

alcohol abuse, but does challenge the finding that he was diagnosed as alcohol dependent. Moreover, Applicant asserts the Judge's challenged finding was based on a document that was sent to the Judge by his alcohol counselor without it being shown to Applicant. Applicant's challenge is not well-founded.

At the hearing, Department Counsel offered five exhibits as evidence and Applicant indicated on the record that he did not object to those exhibits. Accordingly, the Administrative Judge admitted those exhibits into evidence (Hearing Transcript at pp. 7-10). Furthermore, Applicant presented five exhibits on his behalf, all of which were admitted into evidence (Hearing Transcript at pp. 10-11). Once admitted into evidence, those various exhibits could be considered by the Judge in making findings of fact in the case.

There is a rebuttable presumption of good faith and regularity in administrative proceedings. There is nothing in the case file that indicates or suggests that the alcohol counselor submitted, or the Administrative Judge considered, any document that was not made available to Applicant. Furthermore, Applicant's Exhibit A contains information that Applicant was diagnosed as alcohol dependent in 1995. Indeed, that specific information was noted during the hearing below (Hearing Transcript at pp. 24-25). There is no basis for Applicant's assertion that the Judge's challenged finding was based on a document not shown to him.

The fact that Applicant challenges the meaning or significance of Appellant Exhibit A does not demonstrate the Administrative Judge erred in making her findings. As the trier of fact, the Judge is responsible for weighing the evidence and making findings of fact. *See Directive, Additional Procedural Guidance, Item 25.* Absent a showing of action that is arbitrary, capricious, or contrary to law, the Board will not overturn a Judge's factual findings. *See Directive, Additional Procedural Guidance, Item 32.a.* Here, Applicant's strong disagreement with the Judge's finding that he was diagnosed as alcohol dependent is insufficient to demonstrate that finding is arbitrary, capricious, or contrary to law.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. On appeal, Applicant argues: (a) all but the last of his alcohol-related incidents occurred when he was young and before he was married and had children; (b) his alcohol counseling in 1995 was successful and he will remain alcohol-free; (c) he is an excellent worker and citizen and has never jeopardized security in his work; and (d) denying him a security clearance will cost the government money to replace him. The Board construes these arguments as raising the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

The Administrative Judge considered Applicant's overall history of alcohol abuse, the favorable evidence submitted by Applicant, and the fact that Applicant had received a favorable security clearance adjudication in December 1992 on the basis that he had been reformed and would not abuse alcohol again.⁽¹⁾ The Judge concluded "[b]ased on the totality of the evidence . . . Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness" and resolved those doubts in favor of the national security. The Judge's reasoning was not arbitrary, capricious, or contrary to law.

The favorable evidence cited by Applicant on appeal does not demonstrate the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. There is a rebuttable presumption the Judge considered all the record evidence, unless she specifically stated otherwise. Apart from that presumption, a reading of the decision shows the Judge considered the favorable evidence submitted by Applicant. The fact the Judge found that favorable evidence to be insufficient to overcome the negative implications of Applicant's overall history of alcohol abuse does not demonstrate she failed to consider the favorable evidence. As the trier of fact, the Judge has the discretion to weigh such favorable evidence in light of the record as a whole. *Cf. Carosella v. U.S. Postal Service*, 816 F.2d 638, 643 (Fed. Cir. 1987) (agency has discretion to balance the seriousness of employee's conduct against any applicable mitigating factors). Nothing in Applicant's brief persuades the Board the Judge abused her discretion or otherwise acted in an arbitrary or capricious manner when she weighed the evidence, both favorable and unfavorable, in this case.

Applicant's favorable job performance record does not mandate a favorable security clearance decision. An applicant's security eligibility is not limited to consideration of the applicant's job performance. *See, e.g., ISCR Case No. 94-1055* (May 8, 1996) at p. 4. Furthermore, the absence of any security violations by Applicant weighs in his favor, but it does not preclude an adverse security clearance decision based in other security-significant conduct, such as his history of

alcohol abuse. *See, e.g.*, ISCR Case No. 95-0793 (September 30, 1996) at p. 4.

The United States 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). Applicant's overall history of alcohol abuse (including his return to alcohol abuse in 1994 after a period of sobriety) provides a rational basis for the Judge's doubts about Applicant's security eligibility. Given those doubts, the Judge properly resolved them in favor of the national security. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's August 30, 1996 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. The earlier decision in Applicant's favor was DISCR Case No. 92-0615 (December 23, 1993) (Administrative Judge's decision).