

DATE: December 12, 1996

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0311

**APPEAL BOARD DECISION**

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Chief Department Counsel

FOR APPLICANT

*Pro se*

Administrative Judge Robert R. Gales issued a decision, dated August 29, 1996, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed that adverse determination. 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 issues of :

1. Whether the Judge's factual findings are supported by the record evidence.
2. Whether the Administrative Judge's decision was arbitrary, capricious or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated May 6, 1996. The SOR was predicated upon Criterion G (alcohol consumption). On August 29, 1996, the Administrative Judge issued a decision in which he concluded that it is not clearly consistent with the national interest to grant or continue a clearance for Applicant.

The case is now before the Board on Applicant's appeal from the adverse decision.

**Appeal Issues**

1. Whether the Judge's factual findings are supported by the record evidence. Applicant argues on appeal that the allegations against him were unfounded and incorrect. He further argues that the Government should conduct additional

investigation to allow him to provide an investigator with additional factual information.

The Board does not have the power to review allegations in the Statement of Reasons. By asserting that the allegations are unfounded and incorrect, Applicant, in essence, is challenging the accuracy of the Judge's findings upon which the adverse security clearance decision is based. We therefore consider Applicant's argument as raising the issue of whether the Judge's factual findings are supported by the record evidence.

There is ample record evidence on the disputed matters supporting the Administrative Judge's findings. Apart from Applicant's written statement (Form, Item 9), which provides information on Applicant's alcohol history, there are other documents in the record that support the Judge's findings about Applicant's history of alcohol abuse.

The Board does not have the authority to reopen the investigation phase of Applicant's case. *See, e.g.*, ISCR Case No. 95-0594 (August 30, 1996) at p. 3 (neither Administrative Judge nor Appeal Board has authority to review sufficiency of investigation or to order further investigation of an applicant). He had ample opportunity to present additional facts and his interpretation of the facts both to the investigator and to the Administrative Judge below. His disagreement with the Administrative Judge's findings and conclusions does not establish error on the Judge's part.

2. Whether the Administrative Judge's decision was arbitrary, capricious or contrary to law. Applicant argues that his current alcohol consumption is limited to social drinking, that his employer is content with the status quo, that Applicant takes part in random alcohol/drug testing (without problem), and that he believes he poses no threat to the national security. We construe these arguments as an assertion by Applicant that the Administrative Judge's decision was arbitrary, capricious or contrary to law.

As discussed above, the Administrative Judge's key factual findings regarding Applicant's extensive history of alcohol consumption are supported by record evidence. Many of the most pertinent facts came from admissions made by Applicant. The gist of Applicant's arguments were in the record and considered by the Administrative Judge who referred specifically to Applicant's continued social drinking. We sustain the Administrative Judge's conclusion that Applicant's attempts at social drinking are inappropriate given the circumstances of Applicant's history of alcohol-related incidents and diagnosis of alcohol dependence.

Applicant's employer's judgment about his levels of alcohol consumption may be pertinent information but it is not a deciding factor in a security clearance decision. *See* DISCR Case No. 89-1377 (November 2, 1990) at pp 4-5 (favorable opinion of applicant's employer does not bind Administrative Judge or preclude an adverse security clearance decision). Random drug and alcohol testing is a tool that Applicant's employer and others may find useful, however, there is no authority under the Directive to grant a conditional security clearance based on such a program of testing. *See, e.g.*, ISCR Case No. 95-0838 (June 24, 1996) at p. 2.

All of the above, taken with Applicant's belief that he poses no danger to the nation's security, are insufficient to find that the Administrative Judge's decision was arbitrary, capricious or contrary to law.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly the Board affirms the Administrative Judge's 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