

DATE: May 2, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0505

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

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FOR APPLICANT

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Administrative Judge John R. Erck issued a decision, dated December 31, 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. 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 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 a Statement of Reasons (SOR) dated July 26, 1996 to Applicant. The SOR was based on Criterion G (Alcohol Consumption), Criterion H (Drug Involvement), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct).

A hearing was held on October 4, 1996. The Administrative Judge subsequently issued a written decision 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 now before the Board on Applicant's appeal from that adverse decision.

Appeal Issue

On appeal, Applicant does not challenge the Administrative Judge's factual findings about his history of alcohol abuse, drug abuse, and his falsifications about his drug abuse history. ⁽¹⁾ However, Applicant cites extensively to the record evidence and argues: (1) the evidence does not establish a nexus between Applicant's conduct and his security

eligibility; (2) Applicant's alcohol consumption did not result in any work-related problems or security violations; (3) Applicant has demonstrated positive changes in behavior that are supportive of sobriety; and (4) Applicant disclosed his history of drug abuse after his initial falsifications, thereby reducing or eliminating his vulnerability to coercion, exploitation, or pressure. The Board construes these arguments as raising the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes Applicant's arguments fail to demonstrate the Judge erred.

Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). Furthermore, the government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke that person's access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). All that is required is proof of facts and circumstances that indicate a particular applicant is at risk for mishandling classified information, or does not demonstrate the high degree of judgment, reliability, and trustworthiness required of persons granted access to classified information.

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). Security requirements include consideration of a person's honesty, judgment, sobriety, and high sense of his obligations. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Moreover, security clearance decisions are not limited to consideration of an applicant's conduct during duty hours. Any admitted or proven conduct that has security significance --- whether it occurs during duty hours or not --- may be considered by the Administrative Judge in deciding an applicant's security eligibility. *See, e.g.*, ISCR Case No. 94-1055 (May 8, 1996) at p. 4. Even if an applicant is not vulnerable to coercion or blackmail, an adverse security clearance decision can be made based on an applicant's conduct or present circumstances that have security significance independent of any coercion or blackmail possibilities. *See, e.g.*, ISCR Case No. 95-0793 (September 30, 1996) at p. 4.

Alcohol abuse, even if it occurs during nonduty hours, poses a security risk. *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). Furthermore, serious questions about an individual's security suitability are raised when that individual makes knowing and willful falsifications to the government in connection with a security clearance matter. *See Harrison v. McNamara*, 228 F.Supp. 406, 408 (D. Conn. 1964)(lying on application for government position requiring a security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965). The Administrative Judge's findings about Applicant's history of episodic alcohol abuse and Applicant's falsifications about his drug abuse history provide a rational basis for the Judge's adverse conclusions about Applicant's security eligibility. The absence of any evidence that Applicant could be coerced or blackmailed with respect to his alcohol or drug abuse history does not negate the security significance of Applicant's episodic alcohol abuse and his knowing and willful falsifications.

The favorable evidence cited by Applicant on appeal does not demonstrate the Administrative Judge committed error. The Judge must consider all the evidence, both favorable and unfavorable, in making a decision. *See Directive, Section F.3. 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 misconduct against any applicable mitigating factors). Absent a showing that the Judge acted in an arbitrary and capricious manner when weighing the evidence, the Board will not disturb the Judge's findings and conclusions about the relative weight of the favorable and unfavorable evidence. Nothing in Applicant's brief persuades the Board that the Judge acted in an arbitrary and capricious manner with respect to weighing the evidence in this case concerning Applicant's episodic alcohol abuse or his knowing and willful falsifications.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's December 31, 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 Administrative Judge entered formal findings in favor of Applicant with respect to Criterion H. Those favorable formal findings are not at issue on appeal. For purposes of this appeal, Applicant's drug abuse history is only relevant to the issue of his falsifications about that history.