

DATE: August 18, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0695

APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq.

Chief Department Counsel

FOR APPLICANT

Pro se

Administrative Judge Paul J. Mason issued a decision, dated April 30, 1997, 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 (DoD) Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's conclusions were arbitrary, capricious or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) dated January 2, 1997. The SOR contained allegations under Criterion E (Personal Conduct). Applicant elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM) on March 5, 1997. The FORM contained the government's evidence in the case. Applicant made a written reply (dated April 5, 1997) to the FORM. The Administrative Judge issued an unfavorable decision on April 30, 1997. The case is before the Board on appeal from that adverse decision.

Appeal Issue

Applicant does not contest the Administrative Judge's findings of fact. He does contest the Judge's ultimate conclusion that he should not be granted a security clearance. In arguing that the Administrative Judge's decision should be reversed, Applicant states 1) He was never formally charged in the ten domestic dispute complaints that his girlfriend made against him; 2) His decisions in attempting to resolve domestic discord between himself and his girlfriend were justified and should not have been regarded as questionable by the Judge; 3) He has held security clearances for 18

years, has never committed a security violation and has never let his personal life interfere with his handling of classified material. The Board construes Applicant's arguments as raising the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious or contrary to law.

The mere fact that an applicant has not been criminally charged or convicted does not preclude an Administrative Judge from finding that the underlying conduct has security significance and is severe enough in magnitude to warrant an adverse security clearance decision. The Administrative Judge in this case noted that a complaint, charge or similar accusatory device does not constitute proof of the allegations contained in the charge. He therefore factored into his decision the absence of formal charges or a conviction. Nevertheless, he still concluded that the underlying conduct of Applicant was consequential, evidenced questionable judgment and mandated an adverse security clearance decision. It is the particular province of the Administrative Judge to weigh the record evidence and to draw conclusions accordingly. Absent a showing of arbitrary and capricious action, the Judge's findings and conclusions will be upheld on appeal. Here, there was ample record evidence to support the Judge's conclusion that Applicant's repeated altercations with his girlfriend disqualified him for a position of trust.

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). The Judge concluded that Applicant's actions in repeatedly arguing with and confronting his girlfriend to the point where she made ten complaints to the police and had three restraining orders issued against him resulted from his obstinateness in refusing to accept her decision to end their relationship. He also concluded, contrary to the assertions of Applicant, that there was more to these domestic disputes than Applicant's simple disobeying of his girlfriend's household rules. These inferences and conclusions of the Judge have a reasonable and logical basis in the evidence of record. They therefore withstand scrutiny on appeal notwithstanding Applicant's assertions that the disputes were of minor consequence and that he was acting reasonably by contacting his girlfriend against her wishes in an attempt to make the relationship work. Applicant's ability to argue for an alternative interpretation of the record evidence does not demonstrate the Administrative Judge erred. *See, e.g.*, ISCR Case No. 96-0376 (March 6, 1997) at p. 2. Because the Judge's challenged conclusions reflect a reasonable, plausible interpretation of the record evidence, the Board will not disturb them.

The government need not wait until an applicant actually commits a security violation before it can deny or revoke that applicant'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 fact that Applicant's altercations with his girlfriend have not affected Applicant's handling of classified material does not preclude an adverse security clearance decision based on security-significant conduct that is not workplace-related, such as repeated domestic disputes which involved the police and the violation of a court restraining order. Furthermore, security clearance decisions are not limited to consideration of an applicant's job performance or his conduct during duty hours. *See, e.g.*, DOHA Case No. 96-0031 (December 30, 1996) at p. 3. The fact that Applicant's domestic problems did not spill over into work duty hours and did not affect his job performance does not render arbitrary and capricious the Judge's conclusion that Applicant's behavior was disqualifying from a security perspective.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error that warrants remand or reversal. Accordingly, the Board affirms the Administrative Judge's Decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board