

DATE: August 21, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0811

## APPEAL BOARD DECISION

Appearances

FOR GOVERNMENT

William S. Fields, Esq.

Department Counsel

FOR APPLICANT

*Pro se*

Administrative Judge Darlene Lokey Anderson issued a decision, dated April 22, 1997, 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 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 November 13, 1996 to Applicant. The SOR was based on Criterion G (Alcohol Consumption).

Applicant submitted an answer to the SOR, in which he indicated he wanted a decision made in his case without a hearing. Department Counsel prepared a File of Relevant Material (FORM), a copy of which was provided to Applicant. After Applicant's response to the FORM was received, the case was assigned to the Administrative Judge for determination. The Judge subsequently issued a 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.

### Discussion

The Administrative Judge made findings about Applicant's history of alcohol abuse, which spanned the period 1971 to June 1996 and included multiple alcohol-related incidents. Applicant does not challenge the Administrative Judge's

findings about his history of alcohol abuse. Rather, Applicant asserts: (1) he is currently receiving professional assistance to maintain his sobriety; (2) he is currently enrolled in an alcohol rehabilitation program and supplements it by attending Alcoholics Anonymous meetings; (3) his program manager/security officer supports his efforts; and (4) he has not had any security violations. The Board construes Applicant's brief as raising the issue of whether the Judge's adverse clearance decision is arbitrary, capricious, or contrary to law.

The favorable evidence cited by Applicant on appeal was before the Administrative Judge. There is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise. Apart from that presumption, a reading of the decision shows the Judge considered the record evidence concerning Applicant's overall history of alcohol abuse, including Applicant's past and current efforts at rehabilitation. Accordingly, the Board concludes the Judge carried out her responsibility under Section F.3. to consider all the record information, both favorable and unfavorable.

The favorable evidence cited by Applicant on appeal does not preclude an adverse security clearance decision in his case. When the Administrative Judge weighs the evidence, both favorable and unfavorable, the Judge must consider whether the favorable evidence outweighs the unfavorable evidence, or vice versa. *Cf. Carosella v. U.S. Postal Service*, 816 F.2d 638, 643 (Fed. Cir. 1987) (agency has discretion to balance seriousness of employee's conduct against applicable mitigating factors). Absent a showing of arbitrary or capricious action by the Judge, the Board will not disturb the Judge's weighing of the evidence. Here, Applicant has failed to demonstrate the Judge's evaluation of the record evidence was arbitrary, capricious, or contrary to law.

The absence of any security violations by Applicant does not preclude an adverse security clearance decision. The 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 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. Alcohol abuse, even if it occurs during off-duty hours, poses a security risk. *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). Given the record evidence of Applicant's overall history of alcohol abuse, the Judge had a rational basis for her adverse security clearance decision.

### **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's April 22, 1997 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board