

DATE: January 29, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0871

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Claude R. Heiny issued a decision, dated September 19, 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 Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the following issues: (1) whether the case should be remanded to allow Applicant a second hearing; and (2) whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated December 10, 1996 to Applicant. The SOR was based on Criterion G (Alcohol Consumption).

A hearing was held on April 10, 1997. 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 before the Board on Applicant's appeal from that adverse decision.

Appeal Issues

1. Whether the case should be remanded to allow Applicant a second hearing. Applicant asks the Board to remand the case to give him another hearing. In support of this request, Applicant points to various parts of the Administrative Judge's decision that he feels do not accurately reflect his situation and states the Judge's adverse decision shows that either "I did not get my point across or the Judge just didn't hear what I was trying to say."

A review of the record shows that Applicant received a hearing in which he was given the opportunity to respond to the evidence presented by Department Counsel, and the opportunity to present evidence on his own behalf. Without a showing of error that prejudiced Applicant's right to respond to the evidence against him and present evidence on his

own behalf, Applicant is not entitled to have another hearing so he can present his case once again. *See, e.g.*, ISCR Case No. 96-0127 (July 29, 1997) at p. 3.

2. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. Applicant's brief refers to several matters: (a) Applicant has had a long history of working with classified information without any security problem; (b) the period of Applicant's alcohol abuse is not long in relation to his life and career; (c) Applicant's 11 months of sobriety is not too short to warrant a favorable security clearance decision; (d) Applicant's past military service and his loyalty to the United States show he is not a security risk; (e) Applicant is still working with Alcoholics Anonymous (AA); (f) Applicant's drinking in December 1996 before going back to an alcohol treatment center was merely "a final give up drink . . . where [Applicant] took [his] first step in AA"; and (g) the records of Applicant's second alcohol treatment show he is "very motivated for treatment." The Board construes those statements as arguments that raise the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Applicant's argument concerning his loyalty to the United States is misplaced somewhat. Section 7 of Executive Order 10865 indicates that industrial security clearance decisions are not loyalty determinations. Under Executive Order 10865 and the Directive, security clearance decisions do not involve passing judgment on an applicant's loyalty. In this case, nothing in the Administrative Judge's decision indicates or suggests the Judge based his evaluation of Applicant's security eligibility on any express or implied determination about Applicant's loyalty.

Security clearance decisions are not an exact science, but rather involve predictive judgments about a person's security eligibility based on consideration of that person's conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). In addition, security clearance decisions are not limited to consideration of an applicant's conduct during duty hours. Any off-duty conduct that has security implications can be considered in deciding an applicant's security suitability. *See, e.g.*, ISCR Case No. 96-0461 (December 31, 1997) at p. 5. Applicant's overall history of abuse of alcohol included alcohol-related incidents in August 1995 and December 1996, a diagnosis of alcohol dependence, and a return to drinking within a month after completion of his first treatment program. Even in the absence of any alcohol abuse during duty hours, Applicant's overall drinking history has negative security implications that the Administrative Judge properly considered in deciding Applicant's current security eligibility. *See 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).

The government need not wait until a person mishandles or fails to properly safeguard classified information before it can deny or revoke access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Accordingly, Applicant's past record of working with classified information without incident weighs in his favor, but it does not preclude an adverse security clearance decision if there is evidence that indicates he may be at risk to mishandle classified information. Applicant's overall history of alcohol abuse provided evidence upon which the Administrative Judge reasonably could conclude Applicant may pose a security risk.⁽¹⁾

Applicant's brief argues for an alternate interpretation of the evidence that is favorable to him. However, Applicant's arguments fail to demonstrate the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. A reading of the decision shows the Judge considered the record evidence, both favorable and unfavorable, as he was required to do under the Directive. In weighing the record evidence, the Judge had to consider whether the favorable evidence outweighed the unfavorable evidence, or vice versa. *See, e.g.*, ISCR Case No. 97-0016 (December 31, 1997) at p. 4. Absent a showing that the Judge weighed the evidence in an arbitrary and capricious manner, Applicant's ability to cite to favorable evidence in the record does not demonstrate the Judge committed error. Nothing in Applicant's brief persuades the Board that the Judge weighed the record evidence in an arbitrary or capricious manner.

The Administrative Judge concluded Applicant's history of alcohol abuse was serious enough to raise concerns about his suitability to have continued access to classified information, and further concluded that Applicant had failed to demonstrate sufficient reform and rehabilitation to warrant a favorable security clearance decision. The Judge's reasoning and conclusions reflect a plausible and reasonable interpretation of the record evidence and application of pertinent provisions of the Directive. The Judge's adverse security clearance decision follows rationally from his findings and conclusions and, therefore, it is not arbitrary, capricious, or contrary to law.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Applicant is not entitled to get another hearing in his case. Accordingly, the Board affirms the Administrative Judge's September 19, 1997 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

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Member, Appeal Board

Signed: Jeffrey D. Billett

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1. In the conclusion section of the decision, the Administrative Judge once mistakenly characterized Applicant's alcohol abuse as "drug abuse". Reading the decision as a whole, it is clear the Administrative Judge analyzed Applicant's case as an alcohol abuse case, not as a drug involvement one. Accordingly, the Judge's erroneous reference to drug abuse is harmless.

2. In the conclusion section of the decision, the Administrative Judge once mistakenly characterized Applicant's alcohol abuse as "drug abuse". Reading the decision as a whole, it is clear the Administrative Judge analyzed Applicant's case as an alcohol abuse case, not as a drug involvement one. Accordingly, the Judge's erroneous reference to drug abuse is harmless.