

DATE: April 2, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0195

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Joseph Testan issued a decision, dated December 10, 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 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 March 28, 1997 to Applicant. The SOR was based on Criterion G (Alcohol Consumption).

A hearing was held on October 1, 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 unfavorable decision.

Appeal Issue

The Administrative Judge made findings about Applicant's history of alcohol abuse, which included three alcohol-related incidents, a diagnosis of alcohol dependence, and continued drinking against medical advice. The Judge concluded Applicant's alcohol abuse history raised security concerns. The Judge also concluded that Applicant had not rebutted the case against him under Criterion G because Applicant has continued drinking against medical advice and in spite of a diagnosis of alcohol dependence.

Applicant makes several arguments on appeal: (1) he has been cleared in the past on several occasions despite his alcohol abuse; (2) he is working on resolving an outstanding warrant in another State; (3) he has had no alcohol-related

incidents for almost five years; (4) the diagnosis of alcohol dependence was made by the same professional who diagnosed him as having tobacco dependence, despite the fact he had not touched tobacco in the six months before the diagnosis and has not touched tobacco since then; and (5) his current use of alcohol is not excessive and does not affect his health or his ability to safeguard classified information. The Board construes these arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

Applicant's first argument fails to demonstrate the Administrative Judge erred. The federal government is not equitably estopped from denying or revoking a security clearance. *See, e.g.*, ISCR Case No. 96-0461 (December 31, 1997) at p. 4. Accordingly, even if Applicant was cleared in the past despite his alcohol abuse, that would not bar a current adjudication of his security eligibility based on consideration of his overall history of alcohol abuse. Moreover, Applicant's abuse of alcohol in August 1996 (Hearing Transcript at pp. 18-19, 55) would provide sufficient reason for the government to reassess any earlier decision to grant him a security clearance. *See, e.g.*, ISCR Case No. 96-0371 (June 3, 1997) at p. 4.

Applicant's second argument also fails to demonstrate error by the Administrative Judge. The Judge did not base his decision, in whole or in part, on Applicant's legal problem with a state concerning an outstanding warrant associated with one of his alcohol-related incidents. Therefore, for purposes of this appeal, it is irrelevant what Applicant has done or is doing in connection with

that outstanding warrant.

Applicant's third, fourth and fifth arguments are related. The Administrative Judge's findings about Applicant's history of alcohol abuse are supported by the record evidence and are sustainable. Applicant's personal disagreement with the diagnosis of alcohol dependence, however sincere and deeply felt, did not preclude the Administrative Judge from relying on the record evidence that shows Applicant was diagnosed as alcohol dependent by competent medical personnel. Although Applicant's last alcohol-related incident occurred in 1993, that fact did not render the Judge's conclusions or adverse decision arbitrary, capricious, or contrary to law. Even in the absence of alcohol-related incidents, an applicant may be subject to an adverse security clearance decision based on evidence of alcohol dependence. *See Alcohol Consumption Disqualifying Guideline 3* ("Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence"). In addition, Applicant's drinking against medical advice after being diagnosed as alcohol dependent provided a rational basis for the Judge's doubts about Applicant's ability to maintain sobriety. *See, e.g.*, ISCR Case No. 96-0869 (September 11, 1997) at pp. 4-5 (noting a Judge may have rational basis for adverse decision based on an applicant's continued drinking after being diagnosed as alcohol dependent and being advised to abstain from drinking alcohol). Given such doubts, the Judge properly resolved them in favor of the national security. *See, e.g.*, ISCR Case No. 96-0461 (December 31, 1997) at p. 5.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's December 10, 1997 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