

DATE: February 12, 1998

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 97-0324

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

Administrative Judge Joseph Testan issued a decision dated November 3, 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.

The 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 decision is arbitrary, capricious or contrary to law.

**Procedural History**

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated May 2, 1997 to Applicant. The SOR was based on Criterion H (Drug Involvement).

A hearing was held on August 5, 1997. The Administrative Judge subsequently issued a written decision in which he entered a formal finding against Applicant and concluded it was 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 the Administrative Judge's November 3, 1997 adverse security clearance decision.

**Appeal Issue**

Applicant contends that the Administrative Judge gave insufficient consideration to three mitigating conditions in Applicant's case. We construe Applicant's contention as presenting the issue of whether the Administrative Judge's decision was arbitrary, capricious or contrary to law.

The first mitigating condition that Applicant contends should have been applied is Drug Involvement Mitigating Condition #4 ("satisfactory completion of drug treatment program prescribed by a credentialed medical professional").

However, Applicant's contention is founded on his assertion that he completed the drug treatment program on August 28, 1997, several weeks after the hearing date. The Board is precluded from considering new evidence. *See* Directive, Additional Procedural Guidance, Item 29. The Judge's findings about Applicant's treatment program are supported by the record evidence. Accordingly, Applicant's contention is rejected.

The second mitigating condition cited by Applicant is actually a mitigating condition for use in Alcohol Consumption cases.<sup>(1)</sup> However, some of the evidence referred to by Applicant in this context is pertinent to an analysis of his recent drug history. A review of the Administrative Judge's decision indicates that the Judge was fully familiar with Applicant's mitigating evidence and considered it before drawing his conclusions. The fact that the record evidence may lend itself to more than one possible conclusion is not sufficient to prove that the Administrative Judge erred. *See, e.g.*, ISCR Case No. 96-0127, July 29, 1997, p. 3.

The third mitigating condition cited by Applicant is Drug Involvement Mitigating Condition #3 ("a demonstrated intent not to use any drugs in the future"). Applicant again cites record evidence that supports his position. However, the Administrative Judge's conclusions about whether Applicant had successfully demonstrated drug reform were also founded on the record evidence, reflect a reasonable interpretation of the record, and are sustainable. As noted above, the fact that the record is open to more than one plausible interpretation does not prove error below.

## **Conclusion**

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's November 3, 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

1. Mitigating Conditions 3 under the Alcohol Consumption criterion reads "positive changes behavior supportive of sobriety." There is no corresponding language in the Drug Involvement Mitigating Conditions.