

DATE: April 29, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0409

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Paul J. Mason issued a decision, dated December 31, 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 Applicant was denied a fair and impartial adjudication of his security clearance case; and (2) whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated June 9, 1997 to Applicant. The SOR was based on Criterion G (Alcohol Consumption) and Criterion E (Personal Conduct).

A hearing was held on September 4, 1997. The Administrative Judge subsequently issued a written decision. The Judge entered a formal finding for Applicant with respect to Criterion E, formal findings against Applicant with respect to Criterion G, and 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⁾

On appeal, Applicant does not challenge the Administrative Judge's findings about his history of alcohol abuse. However, Applicant argues: (a) his case has dragged on for almost a year since he was interviewed by a Special Agent of the Defense Investigative Service (DIS);⁽²⁾ (b) since the DIS interview he has "been treated with more disrespect than you would treat a hardened criminal," and (c) the decision in his case is not a common sense one. The Board construes Applicant's first two arguments as raising the issue of whether he was denied a fair and impartial adjudication of his security clearance case. The Board construes Applicant's third argument as raising the issue of whether the

Administrative Judge's decision was arbitrary, capricious, or contrary to law.

1. Whether Applicant was denied a fair and impartial adjudication of his security clearance case. An applicant is entitled to a fair and impartial adjudication of his or her security clearance case. Directive, Section D.1. A fair and impartial adjudication is an important right that touches upon the basic integrity of DOHA proceedings, and any action that could impair an applicant's right to a fair and impartial adjudication must be closely scrutinized to determine whether the applicant suffered any prejudice. ISCR Case No. 94-0729 (May 31, 1995) at p. 6.

Although Applicant has expressed concern about the time it has taken for his case to be processed, he has not demonstrated any error in the proceedings below or any prejudice to his rights. Applicant was interviewed by a Special Agent in March 1997. The SOR was issued to Applicant on June 9, 1997. The hearing was held on September 4, 1997, and the Administrative Judge issued his decision on December 31, 1997. Nothing about that sequence of events suggests that Applicant's case took an unusual amount of time to be processed. More importantly, Applicant's appeal argument about the passage of time does not point to anything that shows or indicates how the passage of time prejudiced him or resulted in the denial of his rights under Executive Order 10865 or the Directive. The Board is unable to identify anything in the case record that indicates or suggests that the passage of time involved in the handling of Applicant's case was unusual or in any way prejudicial to his rights. Absent any showing of harm to an applicant's rights, the mere passage of time in the handling of a case does not constitute error that warrants remand or reversal. *See, e.g.*, DISCR Case No. 93-1186 (January 6, 1995) at p. 5.

The Board is unable to identify anything in the case record that supports Applicant's assertion that he has been treated with disrespect during the proceedings below. Furthermore, a review of the record shows that Applicant received the benefit of the procedural protections required by Executive Order 10865 and the Directive: notice of the allegations against him, an opportunity to respond to those allegations, the right to a hearing, the right to object and otherwise respond to the evidence presented against him, the right to present evidence on his own behalf, and the right to have a decision made in his case by an impartial Administrative Judge. Additionally, nothing in the hearing transcript indicates or suggests Applicant was treated with disrespect during the hearing.

2. Whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law. Applicant's assertion that the decision in his case was not a common sense one raises the issue of whether the Administrative Judge's decision was arbitrary, capricious, or contrary to law.

The Administrative Judge made findings about Applicant's history of alcohol abuse during

the period 1981-1997, which included episodic alcohol abuse, several alcohol-related incidents, a diagnosis of alcohol dependence, and a failure to follow medical advice after completion of alcohol abuse treatment in January 1997. None of those findings has been challenged on appeal by Applicant. The Judge's conclusions about Applicant's drinking follow rationally from those unchallenged findings.

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). Security clearance decisions are not limited to consideration of an applicant's job performance or conduct during duty hours. Conduct that has security significance can be considered in evaluating an applicant's security eligibility regardless of whether it occurs during duty hours or not. *See, e.g.*, ISCR Case No. 97-0591 (March 25, 1998) at p. 2. Accordingly, the evidence Applicant submitted about his good work performance did not preclude the Administrative Judge from making an adverse security clearance decision.

Alcohol abuse, even if it occurs off-duty, raises questions about the alcohol abuser's suitability for access to classified information. *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 Administrative Judge acted reasonably when he did not accept Applicant's argument that, from a security perspective, the disease of alcoholism was not different from heart trouble or diabetes. The record evidence of Applicant's overall history of alcohol abuse provides a rational basis for the Judge's adverse decision.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the

Administrative Judge's December 31, 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. The Administrative Judge's formal finding in favor of Applicant with respect to Criterion E is not at issue on appeal.
2. Since Applicant was interviewed, the DIS has been renamed the Defense Security Service.