

DATE: May 28, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0630

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge John R. Erck issued a decision, dated February 25, 1998, 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 Administrative Judge's decision is arbitrary, capricious, or contrary to law; and (2) whether Applicant can be granted a security clearance based on his enrolling in an alcohol program.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated September 17, 1997 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. A File of Relevant Material (FORM) was prepared and a copy given to Applicant. Applicant submitted a response to the FORM, and the case was then assigned to the Administrative Judge for determination.

The Administrative Judge subsequently issued a written decision in which he made findings about Applicant's history of alcohol consumption 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. Whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law. Applicant argues that: (a) he stopped consuming alcohol upon his receipt of the SOR on September 17, 1997; and (b) various findings by the Administrative Judge about SOR paragraphs 1.d., 1.e., 1.f., and 1.g. are wrong. ⁽¹⁾ The Board construes Applicant's

arguments as raising the issue of whether the Judge's adverse decision is arbitrary, capricious, or contrary to law.

Several principles guide the Board when it reviews the sufficiency of an Administrative Judge's factual findings. There is no presumption of error below and the appealing party has the burden of demonstrating error, whether factual or legal or both. As the trier of fact, the Administrative Judge has the primary responsibility for making findings of fact. Directive, Additional Procedural Guidance, Item 25. That responsibility is not diminished when there is conflicting or inconsistent information in the record. In such situations, the Judge must weigh the record evidence and make factual findings. *See, e.g.*, ISCR Case No. 95-0705 (May 16, 1997) at pp. 2 and 4. Absent a showing that the Judge acted in an arbitrary or capricious manner, or contrary to law, the Judge's weighing of the evidence will not be disturbed on appeal. *See, e.g.*, ISCR Case No. 97-0356 (April 21, 1998) at p. 4 n.7. Furthermore, the Board must consider not only whether there is evidence that supports the Judge's findings, but also whether there is record evidence that fairly detracts from the weight of the evidence that supports the Judge's findings. Directive, Additional Procedural Guidance, Item 32.a. *See, e.g.*, ISCR Case No. 97-0191 (April 28, 1998) at p. 4. Finally, whether there is sufficient record evidence to support the Judge's factual findings is a question of law, not one of fact. *See, e.g.*, ISCR Case No. 97-0356 (April 21, 1998) at p. 4 n.7.

In this case, the Administrative Judge reviewed the record evidence and made factual findings about Applicant's history of alcohol consumption. The Judge also evaluated Applicant's statements and explained why he found some of them to have questionable credibility. The Judge concluded that there was sufficient evidence to find Applicant had episodically abused alcohol and had an alcohol problem within the meaning of Criterion G, despite Applicant's denials. The fact that Applicant can argue for an alternate interpretation of the record evidence is not enough to demonstrate the Judge erred. *See, e.g.*, ISCR Case No. 97-0289 (January 22, 1998) at p. 6. A review of the record evidence persuades the Board that the Judge's findings reflect a plausible, reasonable interpretation of the record evidence. As such, those findings are sustainable.

The Administrative Judge's findings about Applicant's history of alcohol provide a rational basis for the Judge's adverse security clearance decision. The federal government 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). A history of alcohol abuse provides a rational basis for denying or revoking access to classified information. *See, e.g.*, ISCR Case No. 96-0871 (January 29, 1998) at p. 3. The Judge's findings about Applicant's overall history of alcohol consumption provided a rational basis for the Judge's reservations about Applicant's suitability for access to classified information.⁽²⁾ Furthermore, the Judge had a reasoned basis, supported by the record evidence, for his doubts about whether Applicant would be likely to refrain from alcohol abuse in the future. Such doubts were relevant to the Judge's decision whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. *See* Directive, Section F.3.e. ("Absence or presence of rehabilitation") and Section F.3.f. ("Probability that the circumstances or conduct will continue or recur in the future"). For all these reasons, the Judge's adverse decision is not arbitrary, capricious, or contrary to law.

2. Whether Applicant can be granted a security clearance based on his enrolling in an alcohol program. Applicant states he is willing to enroll in an alcohol awareness program chosen by the Board in order to get a reversal of the adverse security clearance decision. There is no authority under the Directive to provide Applicant with the type of relief he seeks. *See, e.g.*, DOHA Case No. 96-0228 (April 3, 1997) at p. 3. Furthermore, absent a showing of harmful error below, there is no basis for the Board to reverse an Administrative Judge's decision.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's February 25, 1998 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. Applicant also offers two documents for consideration by the Board and argues they reflect his job performance after a January 1997 driving while intoxicated incident. Neither document was part of the record before the Administrative Judge. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item 29. Accordingly, the Board will not address Applicant's argument based on that new evidence.

2. The record evidence about Applicant's job performance did not preclude the Administrative Judge from making an adverse decision in this case. Security clearance decisions are not limited to consideration of an applicant's job performance or conduct during work hours. *See, e.g.*, ISCR Case No. 97-0409 (April 29, 1998) at p. 3.