

DATE: December 31, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0055

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

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

#### FOR APPLICANT

#### *Pro Se*

Administrative Judge John G. Metz, Jr., issued a decision, dated September 1, 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 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 January 16, 1998 to Applicant. The SOR was based on Criterion G (alcohol consumption).

Applicant submitted an answer to the SOR in which he indicated was not requesting a hearing.<sup>(1)</sup> A File of Relevant arial (FORM) was prepared, and Applicant was provided with a copy of the FORM. Applicant did not submit a response to the FORM.<sup>(2)</sup> The case was then assigned to the Administrative Judge for disposition.

The Administrative Judge subsequently issued a written decision. The Judge made findings about Applicant's history of alcohol abuse. The Judge found Applicant's history of alcohol abuse spanned a period of approximately 18-19 years and included various alcohol-related problems, multiple alcohol-related incidents (from December 1984 to September 1997), and prior failed alcohol rehabilitation efforts. The Judge concluded that Applicant's recent efforts at rehabilitation (including his sobriety since the September 1997 alcohol-related incident) were insufficient to mitigate his overall history of alcohol abuse and that it was too soon to conclude Applicant would not relapse into alcohol abuse. The Judge entered formal findings against Applicant under 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 now before the Board on Applicant's appeal from that adverse decision.

## Appeal Issue

Applicant's appeal brief contains many statements about matters that go beyond the record evidence. Furthermore, Applicant submitted with his brief 23 documents that postdate the Administrative Judge's decision, four documents that are undated, and one document that predates the decision. None of those 28 documents was in the record below and, therefore, they constitute new evidence.<sup>(3)</sup> The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item 29. Accordingly, the Board will not consider any arguments Applicant makes based on the new evidence he seeks to present on appeal. The Board will address only those arguments made by Applicant that are based on the record evidence before the Administrative Judge.

Applicant does not challenge the Administrative Judge's findings about his history of alcohol abuse. Rather, Applicant argues: (a) his drinking problems were the result of his alcoholism and his environment; (b) he reported his May 1996 and September 1997 alcohol-related incidents to the security officer; (c) his past alcohol rehabilitation efforts failed because of denial of his alcohol dependence; (d) he realizes he is an alcoholic and must maintain sobriety; (e) he is actively involved in an ongoing alcohol rehabilitation program; (f) he has maintained sobriety since September 1997; (g) he satisfies the Alcohol Consumption Mitigating Conditions; (h) he has never been involved in a security violation; and (i) his position requires he have access to a secure building, but does not require him to have access to classified information. The Board construes these arguments as raising the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes that Applicant has not demonstrated the Judge's decision is arbitrary, capricious, or contrary to law.

The Administrative Judge considered Applicant's overall history of alcohol abuse, the diagnoses made of Applicant by health care professionals (including the guarded prognosis for Applicant made in October 1997), Applicant's past and present efforts at alcohol rehabilitation, Applicant's most recent period of sobriety, and the favorable evidence submitted on behalf of Applicant. The Judge's approach was consistent with the Judge's obligation to consider all available information, both favorable and unfavorable. Directive, Section F.3. Applicant's honesty and candor with security personnel about his May 1996 and September 1997 alcohol-related incidents did not preclude the Judge from considering the security significance of Applicant's overall history of alcohol abuse, which spanned a period of approximately 18-19 years. *See, e.g.*, ISCR Case No. 97-0699 (November 24, 1998) at p. 3.

The favorable evidence cited by Applicant on appeal does not demonstrate the Administrative Judge erred. When evaluating the record evidence, the Judge must consider whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 97-0752 (December 4, 1998) at p. 5. The Judge has discretion in weighing the record evidence, and the weight the Judge gives to the record evidence will not be disturbed on appeal unless there is a showing that the Judge acted in a manner that was arbitrary, capricious, or contrary to law. Applicant's brief does not demonstrate any such error by the Judge. Applicant's ability to argue for an alternate weighing of the record evidence, standing alone, does not demonstrate the Judge weighed the evidence improperly. *See, e.g.*, ISCR Case No. 97-0765 (December 1, 1998) at p. 4; ISCR Case No. 97-0699 (November 24, 1998) at p. 3. A review of the record as a whole persuades the Board that the Judge weighed the evidence in a reasonable manner and made factual findings and reached conclusions that reflect a plausible interpretation of the record evidence.

The Administrative Judge found Applicant had demonstrated positive changes in behavior supportive of sobriety (Alcohol Consumption Mitigating Condition 3), but concluded the evidence of rehabilitation presented by Applicant was not enough to overcome the negative evidence of Applicant's long history of alcohol abuse. The Judge's reasoning on this point is not arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 98-0088 (July 20, 1998) at p. 3 (Judge not required to apply pertinent Adjudicative Guidelines in isolation without regard to record evidence as whole). Applicant contends the Judge should have applied Alcohol Consumption Mitigating Conditions 1,<sup>(4)</sup> 2,<sup>(5)</sup> and 4.<sup>(6)</sup> Applicant's arguments for application of the cited Adjudicative Guidelines rely heavily on the new evidence he offers on appeal. As discussed earlier, that new evidence cannot be considered on appeal. The issue before the Board is whether, based on the record evidence before the Judge, the Judge should have applied Alcohol Consumption Mitigating Conditions 1, 2, and 4. The record evidence of Applicant's history of multiple alcohol-related incidents provided the Judge with a rational basis for not applying Alcohol Consumption Mitigating Condition 1. It is not tenable for Applicant to argue that his multiple alcohol-related incidents did not indicate a pattern. Given the fact that Applicant had abused alcohol up to early September 1997, about 7 months before the close of the record evidence, it was not arbitrary,

capricious, or contrary to law for the Judge to not apply Alcohol Consumption Mitigating Condition 2. Applicant's most recent period of sobriety was not long enough to require the Judge, as a matter of law, to apply Alcohol Consumption Mitigating Condition 2. Finally, the record evidence does not support application of Alcohol Consumption Mitigating Condition 4. In short, the Judge did not commit error with respect to application of the Adjudicative Guidelines as contended by Applicant.

The federal government must be able to repose a high degree of trust and confidence in persons granted a security clearance, and it need not wait until an applicant mishandles classified information before it can deny or revoke a security clearance. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). The absence of any security violations weighs in Applicant's favor, but it did not preclude the Administrative Judge from making an adverse decision based on Applicant's history of alcohol abuse. All that is required is a showing that an applicant's conduct or circumstances pose a security risk. *See, e.g.*, ISCR Case No. 97-0752 (December 4, 1998) at p. 4. Applicant's overall history of alcohol abuse (coupled with the relative brevity of his most recent effort at alcohol rehabilitation, and the guarded prognosis for Applicant indicated in October 1997) provides a rational basis for the Judge's adverse conclusions about Applicant's security eligibility.

It is irrelevant whether Applicant's position requires a security clearance for access to a secure area or for access to classified information. Either type of access implicates the national security interests of the United States and requires a finding that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. Accordingly, the Administrative Judge's decision is not rendered arbitrary, capricious, or contrary to law by the fact that Applicant seeks a security clearance for access to a secure building and not for direct access to classified information.

## **Conclusion**

Applicant has failed to demonstrate that there is error below. Accordingly, the Board affirms the Administrative Judge's September 1, 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. When responding to the SOR, Applicant submitted several letters and memoranda from other people supporting him. Applicant's answer to the SOR and the documents submitted with it are part of the record evidence.

2. The April 7, 1998 letter to Applicant that accompanied the FORM informed him that he had a right to object to the FORM and to submit any material he wanted the Administrative Judge to consider in his case. That letter also informed

Applicant that "If you do not file any objections to the [FORM] or submit any information you wish to have considered within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on the attached file of relevant material." Applicant had the opportunity to present additional evidence in response to the FORM, but he did not do so. By failing to offer additional evidence in response to the FORM, Applicant waived his right to have such evidence considered in his case. *See, e.g.,* ISCR Case No. 98-0198 (November 17, 1998) at p. 2.

3. New evidence includes evidence that was not presented by a party during the proceedings below, even if the proffered evidence existed before or during those proceedings. ISCR Case No. 98-0198 (November 17, 1998) at p. 2 n.1.

4. "[T]he alcohol related incidents do not indicate a pattern."

5. "[T]he problem occurred a number of years ago and there is no indication of a recent problem."

6. "[F]ollowing diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional."