

DATE: February 16, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0225

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Barry M. Sax issued a decision dated August 19, 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.

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 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 April 9, 1998 to Applicant. The SOR was based on Criteria J (Criminal Conduct), D (Sexual Behavior) and G (Alcohol Consumption).

A hearing was held on July 9, 1998. The Administrative Judge subsequently issued a written decision on August 19, 1998 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 adverse decision.

Appeal Issues

1. Whether the Administrative Judge's adverse security clearance decision is arbitrary capricious or contrary to law? [\(1\)](#)
 Applicant does not challenge any specific findings of fact or conclusions of law from the Administrative Judge's decision below. Applicant's brief focuses on his current situation and requests that the Board grant him a security clearance in light of the positive aspects he has presented. The Board construes Applicant's brief as arguing that the Administrative Judge's decision below was arbitrary, capricious or contrary to law.

Regarding Applicant's criminal conduct and sexual behavior, Applicant notes that his arrest took place almost three years ago. Applicant also notes that his daughter returned to his home in January 1998 and there have been no additional

incidents. He also notes that both he and his daughter are in counseling.⁽²⁾ The Board construes Applicant's points collectively as arguing either that the Administrative Judge's findings and conclusions under these criteria were not rationally justified by the record evidence or that the Administrative Judge did not reasonably weigh the record evidence. The Board is not persuaded by Applicant's points. The fact that a party may be able to draw upon record evidence to support their interpretation of the situation does not invalidate the Administrative Judge's findings and conclusions. In this case, there was ample record evidence to support the Administrative Judge's findings and conclusions as to the disqualifying nature of Applicant's history of criminal conduct and sexual behavior. A review of the record evidence as a whole persuades the Board that Administrative Judge weighed the evidence in a reasonable manner and that his findings and conclusions reflect a plausible interpretation of the record evidence. *See, e.g.*, ISCR Case No. 98-0055 (December 31, 1998) at page 3.

Applicant addresses Criterion G by pointing out that he has "been sober for over 2 years now" and is "currently attending AA meetings." The Board construes Applicant as saying that his track record on alcohol consumption does not justify the Administrative Judge's adverse conclusions under this criterion. The Board agrees with Applicant's argument, in part because the Administrative Judge himself concluded that Applicant is not likely to abuse alcohol in the future. The Board is unable to reconcile the Administrative Judge's findings that Applicant "has not consumed alcohol for two years" and "is not likely to abuse alcohol in the future" with his adverse conclusion under Criterion G. The Administrative Judge's inconsistent findings and conclusions under Criterion G constitute error. However, the ultimate outcome of the case is unchanged as the adverse conclusions under Criteria J and D remain intact.

Conclusions

Applicant has failed to meet his burden on appeal of demonstrating harmful error. Accordingly the Board affirms the Administrative Judge's August 19, 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. The Administrative Judge also entered a formal finding for Applicant with respect to SOR allegation 3.a. That formal finding is not at issue on appeal and need not be addressed by the Board.

2. Applicant also asserts that his daughter was released from state custody on the day of his hearing. That information was not contained in the record evidence. Applicant's assertion is thus new evidence. The Board may not consider new evidence on appeal. Directive, Additional procedure Guidance, Item 29.

