

DATE: February 4, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0392

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Wilford H. Ross issued a decision, dated October 27, 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 decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated June 2, 1998 to Applicant. The SOR was based on Criterion H (Drug Involvement). A hearing was held on August 13, 1998. The Administrative Judge subsequently issued a written decision 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 now before the Board on Applicant's appeal from that adverse decision.

Appeal Issue

Applicant does not challenge the Administrative Judge's factual findings about his history of drug abuse. However, Applicant argues: (a) he has never mishandled classified information since he began working for his employer, a defense contractor, in 1979; (b) his work has always been of the highest quality, and his skills and abilities are an asset to his employer; and (c) he is currently in counseling, he has remained drug-free, and he will never return to drug abuse. The Board construes these arguments as raising the issue of whether the Judge's decision is arbitrary, capricious, or contrary to law.

Attached to Applicant's appeal brief is a document that is not part of the record evidence. That document constitutes new evidence, which the Board cannot consider. Directive, Additional Procedural Guidance, Item 29. In addition, that

document pertains to a matter that occurred after the hearing. The Board reviews a Judge's decision based on the record evidence before the Judge, and it will not find the Judge erred based on consideration of matters or events that occur after the close of the record. *See, e.g.*, ISCR Case No. 97-0769 (July 9, 1998) at p. 3 ("A Judge cannot fairly be found to have erred for not considering events that might occur after the close of the record evidence.").

The absence of any security violation by Applicant does not render the Administrative Judge's adverse decision arbitrary, capricious, or contrary to law. The federal government need not wait until an applicant actually mishandles or fails to properly safeguard classified information before it can deny or revoke that person's access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). All that is necessary is proof of facts and circumstances that indicate that an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See, e.g.*, ISCR Case No. 97-0435 (July 14, 1998) at p. 3. A history of drug abuse raises questions about an applicant's suitability for access to classified information. *See, e.g.*, *AFGE Local 1533 v. Cheney*, 944 F.2d 503, 506 n.6 (9th Cir. 1991)(noting various ways that drug abuse could pose security risks). Applicant's history of drug abuse provides a rational basis for the Judge's negative conclusions about Applicant's suitability for a security clearance.

The value of Applicant's skills and abilities to his employer is irrelevant to a determination of his suitability for a security clearance. There is no logical connection between Applicant's suitability for access to classified information and his value to his employer. *See, e.g.*, ISCR Case No. 96-0710 (June 20, 1997) at p. 3. It is possible for an applicant to be an asset to his or her employer, yet at the same time fail to demonstrate the high degree of judgment, reliability, and trustworthiness that must be expected of persons granted a security clearance.

Neither Applicant's job performance nor his efforts at drug reform are favorable evidence that required the Administrative Judge to make a favorable security clearance decision. A Judge must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 97-0699 (November 24, 1998) at p. 3. The Judge acted in a reasonable manner when he considered the evidence of Applicant's efforts at drug rehabilitation and weighed it against Applicant's history of drug abuse. Applicant's ability to argue for an alternate weighing of the record evidence does not, standing alone, demonstrate the Judge weighed the evidence in an arbitrary or capricious manner. Considering the record evidence as a whole, the favorable evidence cited by Applicant is not sufficient to demonstrate the Judge erred.

Conclusion

Applicant has failed to demonstrate the Administrative Judge erred. Accordingly, the Board affirms the Judge's October 27, 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