

DATE: March 11, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0479

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esq., Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Darlene Lokey Anderson issued a decision dated October 29, 1998, in which she 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 issue: Did the Administrative Judge abide by her own procedural rulings.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR), dated July 6, 1998. The SOR was based on Criterion G (alcohol consumption).

A hearing was held on October 16, 1998. The Administrative Judge subsequently issued a written decision in which she 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

Did the Administrative Judge abide by her own administrative rulings? Applicant asserts that the Administrative Judge failed to abide by her own ruling at the hearing. Specifically, he claims that the Administrative Judge said that she was leaving the record open until November 1, 1998 but that she proceeded to issue her decision on October 29, 1998. Applicant asserts that not all of his documentary supporting material was considered as a result of the October issuance of the Judge's decision. The Board concludes that Applicant's argument lacks merit.

The Administrative Judge stated twice at the hearing that she would keep the record open until October 26 (tr. pp. 67, 76). Nothing in the record supports Applicant's claim that the Judge said she would keep the record open until November 1. Furthermore, it appears from the file that almost all of Applicant's post-hearing documentation was

successfully submitted prior to the Administrative Judge's decision.

The Administrative Judge states in her decision that Applicant made two post-hearing submissions. There is a rebuttable presumption that the Administrative Judge considered all the record evidence unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 98-0247 (January 20, 1999) at p. 2. Thus the Board concludes that the Administrative Judge did keep the record open at least as long as she said she would. Furthermore, there is no evidence that Applicant suffered any meaningful harm from any misunderstanding he might have had as to the date when the record would close.

There is no presumption of error below, and the appealing party has the burden of demonstrating the Administrative Judge committed error. Directive, Additional Procedural Guidance, Items 30 and 32.

Conclusion

Applicant has failed to demonstrate the Administrative Judge erred. Therefore, the Judge's October 29, 1998 decision is affirmed.

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