

DATE: October 15, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0743

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Barry M. Sax issued a decision, dated July 12, 1999, 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 erred by finding Applicant's absences from work were related to drinking or drug problems; and (2) 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 November 24, 1998 to Applicant. The SOR was based on Criterion G (Alcohol Consumption), Criterion H (Drug Involvement), and Criterion E (Personal Conduct).

A hearing was held on May 28, 1999. 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 before the Board on Applicant's appeal from the Judge's adverse decision.

Appeal Issue

1. Whether the Administrative Judge erred by finding Applicant's absences from work were related to drinking or drug problems. Applicant contends the Administrative Judge erred by finding Applicant's absences from work were related to drinking or drug problems. There is conflicting record evidence about the nature of Applicant's absences from work. Faced with such conflicting record evidence, the Administrative Judge had to weigh the record evidence in light of his assessment of Applicant's credibility. Giving due deference to the Judge's credibility determination (Directive, Additional Procedural Guidance, Item 32.a.), the Board need not agree with the Judge's finding about the nature of Applicant's absences from work to conclude that finding is sustainable. Applicant's ability to argue for an alternate

interpretation of the record evidence is not sufficient to demonstrate the Judge erred on this point. *See, e.g.*, ISCR Case No. 98-0617 (July 14, 1999) at p. 2.

2. Whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Applicant contends: (1) the Administrative Judge did not reasonably balance Applicant's misconduct against the national security; (2) the Administrative Judge failed to give due weight to extenuating circumstances in Applicant's case; (3) the Administrative Judge did not take into account that Applicant used an insignificant amount of methamphetamine infrequently over a very brief period of time; (4) the Administrative Judge should have given more weight to the passage of time since Applicant's misconduct; (5) Applicant has not tested positive for any illegal drugs for more than 18 months, he now seldom drinks, and he has reconciled his marriage; (6) Applicant's misconduct did not show a recurring pattern of questionable judgment, irresponsibility, or disturbing substance abuse; (7) an adverse decision would render Applicant ineligible for his job and would work a substantial hardship on Applicant; and (8) the Administrative Judge's adverse decision is not justified under the whole person concept. The Board construes these contentions as raising the issue of whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

An Administrative Judge must consider the record evidence as a whole and apply pertinent provisions of the Adjudicative Guidelines. Directive, Section F.3. Furthermore, an Administrative Judge must reach conclusions that follow rationally from the Judge's findings of fact and reflect a reasonable, common sense assessment of an applicant's security eligibility in light of the whole person concept. Under the whole person concept, an Administrative Judge must consider the totality of an applicant's conduct or circumstances to decide whether it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. *See, e.g.*, ISCR Case No. 98-0350 (March 31, 1999) at p. 3.

Considering the record as a whole, the Board concludes Applicant has failed to demonstrate the Administrative Judge acted in a manner that is arbitrary, capricious, or contrary to law when weighing of the record evidence in this case. The Judge's weighing of the evidence about Applicant's episodic alcohol abuse and infrequent use of methamphetamine reflects a plausible interpretation of the record evidence as a whole. Furthermore, the Judge's expressed doubts about Applicant's judgment, reliability, and trustworthiness follow rationally from his findings about the totality of Applicant's abuse of alcohol and methamphetamine. Given those doubts, the Judge properly resolved them in favor of the national security. *See, e.g.*, ISCR Case No. 98-0265 (March 17, 1999) at p. 8.

It is irrelevant that the Administrative Judge's unfavorable decision will have an adverse effect upon Applicant. An applicant is not made more or less suitable for a security clearance based on how a security clearance decision might affect the applicant. *See, e.g.*, ISCR Case No. 98-0435 (September 16, 1999) at p. 2.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's July 12, 1999 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