

DATE: September 13, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0119

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge Paul J. Mason issued a decision, dated June 29, 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 against Applicant with respect to certain incidents for which the criminal charges were dismissed or Applicant was acquitted; (2) whether the Administrative Judge failed to give due weight to Applicant's honesty and candor with the government; and (3) whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated February 23, 1999 to Applicant. The SOR was based on Criterion G (Alcohol Consumption).

Applicant submitted an answer to the SOR in which he indicated he wanted "a decision without a hearing." A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant. No response to the FORM was received from Applicant. The case was assigned to the Administrative Judge for determination.

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 that adverse decision.

Appeal Issues⁽¹⁾

1. Whether the Administrative Judge erred by finding against Applicant with respect to certain incidents for which the criminal charges were dismissed or Applicant was acquitted. Applicant asserts his various arrests do not show he has a

record of alcohol abuse because he has not been convicted for any of those incidents. Applicant's argument fails to demonstrate the Administrative Judge erred in this case.

The fact that an applicant has been arrested or otherwise charged with a criminal offense, standing alone, does not constitute proof the applicant engaged in criminal conduct. *See, e.g.*, ISCR Case No. 98-0424 (July 16, 1999) at p. 4. Accordingly, the fact that Applicant was arrested on several occasions does not prove he engaged in the criminal conduct with which he was charged. However, the absence of a conviction does not preclude the government from proving an applicant engaged in criminal conduct. *See, e.g.*, ISCR Case No. 98-0419 (April 30, 1999) at p. 7. Furthermore, the fact that criminal charges were dropped, dismissed, or resulted in an acquittal does not preclude an Administrative Judge from finding an applicant engaged in the conduct underlying those criminal charges. *See, e.g.*, ISCR Case No. 94-0954 (October 16, 1995) at p. 4.

Considering the record as a whole, the Administrative Judge had sufficient record evidence to find Applicant had engaged in episodic alcohol abuse or been involved in alcohol-related incidents within the meaning of Criterion G. For example, Applicant admitted abusing alcohol of various occasions (FORM, Items 6 and 7). In addition, various police reports contain personal observations by police officers that are probative of alcohol abuse by Applicant (FORM, Items 10, 13, 14, 16, 18). *See, e.g.*, ISCR Case No. 96-0575 (July 22, 1997) at p. 3 ("Police reports are admissible in civil proceedings as evidence of matters personally observed by the reporting police officer, as well as factual findings resulting from an investigation made pursuant to lawful authority. Such material was admissible in these proceedings as an exception to the hearsay rule.") (citations omitted).

Applicant also argues that his conduct is less threatening because it is only alcohol abuse and not alcoholism. The Board finds that argument unpersuasive since: (1) the Administrative Judge did not find Applicant to be an alcoholic, (2) alcohol abuse is disqualifying conduct under the Directive, and (3) Applicant's argument is based on new evidence.

2. Whether the Administrative Judge failed to give due weight to Applicant's honesty and candor with the government. Applicant asserts he has always cooperated with investigators, and has truthfully answered all questions about his past to the best of his knowledge. The Board construes Applicant's assertions as raising the issue of whether the Administrative Judge failed to give due weight to Applicant's honesty and candor with the government.

An applicant's honesty and candor with the government do not preclude the government from considering the security significance of the applicant's admitted conduct. *See, e.g.*, ISCR Case No. 98-0685 (May 20, 1999) at p. 3. The security significance of alcohol abuse is not reduced or diminished merely because an applicant admits he or she has abused alcohol. Accordingly, Applicant's admissions about his drinking problems did not preclude the Administrative Judge from evaluating Applicant's alcohol abuse and concluding that it had negative security significance under Criterion G.

3. Whether the Administrative Judge's adverse decision is arbitrary, capricious, or contrary to law. Applicant refers to his job performance and his military service record and contends that he would not do anything to jeopardize the national security. The Board construes this contention as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious, or contrary to law.

The favorable evidence cited by Applicant does not demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. The Judge must consider the record evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. *See, e.g.*, ISCR Case No. 98-0621 (August 19, 1999) at p. 3. Considering the record as a whole, the Judge did not act in an arbitrary or capricious manner in weighing the evidence in this case. Furthermore, the favorable evidence cited by Applicant did not require the Judge, as a matter of law, to make a favorable security clearance decision.

The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Security clearance decisions include consideration of a person's judgment, reliability, and trustworthiness. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). A history of alcohol abuse, even if it occurs during nonduty hours, provides a rational basis for the government to question an applicant's security eligibility. *See, e.g.*, *Cole v. Young*, 351 U.S. 536, 550 n.13 (1956); *Croft v. Department of Air Force*, 40 M.S.P.R. 320, 321 n.1 (1989). The record evidence of Applicant's history of episodic alcohol abuse provides a rational basis for the Administrative

Judge's adverse decision in this case.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's June 29, 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

1. On appeal, Applicant proffers information about enrolling in an employee assistance program to get alcohol counseling, and asserts he has abstained from alcohol for approximately four months. Those statements go beyond the record below. Applicant also submitted with his appeal brief a letter from his supervisor that was written after the Administrative Judge's decision was issued. Applicant's statements and his supervisor's letter constitute new evidence, which the Board cannot consider. Directive, Additional Procedural Guidance, Item 29. Applicant had the opportunity to present evidence in response to the FORM for consideration by the Administrative Judge, but he did not do so.