

DATE: April 12, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0260

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

Administrative Judge John G. Metz, Jr., issued a decision, dated October 19, 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 Statement of Reasons was in error by alleging that Applicant had disobeyed a court order to attend alcohol treatment; (2) whether the Administrative Judge erred by concluding Applicant did not demonstrate rehabilitation sufficient to warrant a favorable security clearance decision; and (3) whether Applicant can be granted a security clearance at the lowest possible level so he can keep his job.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated April 20, 1999 to Applicant. The SOR was based on Criterion G (Alcohol Consumption), Criterion E (Personal Conduct), and Criterion J (Criminal Conduct).

Applicant submitted an answer to the SOR in which he indicated he did not want a hearing. A File of Relevant Material (FORM) was prepared. A copy of the FORM was given to Applicant, who submitted a response to the FORM. The case was then assigned to the Administrative Judge for determination.

The Administrative Judge issued a written decision, dated October 19, 1999, 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 security clearance decision.

Appeal Issues ⁽¹⁾

1. Whether the Statement of Reasons was in error by alleging that Applicant had disobeyed a court order to attend

alcohol treatment. The Administrative Judge made findings about Applicant's history of alcohol abuse during the period 1991-January 1998, which included five alcohol-related arrests and treatment for alcohol-related medical complications. On appeal, Applicant does not challenge the Judge's findings about his history of alcohol abuse. However, Applicant does contend that SOR 1.h. is incorrect to the extent it alleged that he disobeyed a court order to attend alcohol treatment. Applicant's argument does not demonstrate the Judge erred.

The Administrative Judge found: (a) as a result of the sentence Applicant received in connection with a December 1996 driving while intoxicated incident, Applicant underwent a court-ordered evaluation in August 1997 that led to him being referred for treatment; (b) Applicant did not complete the treatment because he has been living overseas while working for his government contractor; and (c) Applicant intends to complete the treatment after he returns to the United States. The Judge did not find that Applicant disobeyed the court order. Rather, the Judge correctly found that Applicant had not completed the treatment. Furthermore, the Judge accepted Applicant's explanation for his failure to complete that treatment. Applicant's dissatisfaction with the wording of SOR 1.h. is irrelevant in view of the Judge's specific findings about the events covered by SOR 1.h.

2. Whether the Administrative Judge erred by concluding Applicant did not demonstrate rehabilitation sufficient to warrant a favorable security clearance decision. On appeal, Applicant does not challenge the Administrative Judge's findings about his history of alcohol abuse or his falsifications. However, Applicant argues: (a) he has learned from his mistakes; (b) he wonders how much more he must suffer for his past mistakes; (c) he has made a new start in his life since he went overseas; (d) he no longer drinks; (e) he has been taking care of all his responsibilities back in the United States; (f) the Board can contact his ex-wife to confirm he has not missed one payment to her since November 1997; (g) he selected the country he currently works in because its anti-alcohol policies help him avoid alcohol and its temptations; (h) he thanks God for a second chance to do what is right in his life; and (i) he has become a better person. The Board construes these arguments as raising the issue of whether the Judge erred by concluding Applicant did not demonstrate rehabilitation sufficient to warrant a favorable security clearance decision.

As a preliminary matter, the Board notes it cannot consider new evidence. Directive, Additional Procedural Guidance, Item 29. Accordingly, the Board cannot contact Applicant's ex-wife to confirm what Applicant asks the Board to confirm through her. Furthermore, because of the prohibition against new evidence on appeal, the Board will not consider any statements made in Applicant's appeal brief that go beyond the record evidence below.

Applicant admitted most of the SOR allegations about his alcohol history. Furthermore, Department Counsel presented evidence in support of the various SOR allegations through the FORM. Once the various SOR allegations were admitted or proven by evidence in the FORM, the burden shifted to Applicant to present evidence to show refutation, extenuation, mitigation, or changed circumstances sufficient to warrant a favorable security clearance decision. Directive, Additional Procedural Guidance, Item 15. Given the "clearly consistent with the national interest" standard, Applicant had a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 98-0394 (June 10, 1999) at p. 6.

Between Applicant's admissions and the record evidence, the Administrative Judge had a sufficient basis to make his findings about Applicant's history of alcohol abuse, and to find that Applicant falsified a security clearance application in December 1997 by failing to disclose all of his alcohol-related incidents. The Judge had to consider the nature and seriousness of Applicant's conduct, weigh the record evidence as a whole, and decide whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. In doing so, the Judge concluded Applicant had failed to demonstrate sufficient evidence of rehabilitation to warrant a favorable security clearance decision. Applicant's appeal arguments fail to demonstrate the Judge acted in any way that was arbitrary, capricious, or contrary to law when he analyzed the facts and circumstances of Applicant's case.

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 requirements 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). Alcohol abuse 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 S.P.R. 320, 321 n.1 (1989). Furthermore, falsification of a security questionnaire provides a rational basis for questioning a person's security eligibility. *See Harrison v. McNamara*, 228 F.Supp. 406,

408 (D. Conn. 1964)(lying on application for government position requiring a security clearance raises questions as to person's reliability and justifies dismissal), *aff'd per curiam*, 380 U.S. 261 (1965). Applicant's history of alcohol abuse and his falsification of a security clearance application in December 1997 provide a rational basis for the Judge's adverse conclusions about Applicant's suitability for a security clearance.

3. Whether Applicant can be granted a security clearance at the lowest possible level so he can keep his job. Applicant also asks the Board whether it would be possible for him to be granted the lowest level of clearance possible to enable him to keep his job. Applicant's request seeks relief that the Board cannot grant him. It is well established that DOHA decisions must either grant or deny a clearance and that we have no authority to compromise and grant a lower level clearance as an intermediate solution. Section C.2. of the Directive provides that "[a]n unfavorable clearance decision denies any application for a security clearance and revokes any existing security clearance, thereby preventing access to classified information at any level and the retention of any existing security clearance." *See also* DOHA Case No. 96-0049 (November 25, 1996) at p. 4; ISCR Case No. 95-0523 (May 15, 1996) at p. 2.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's October 19, 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. The Administrative Judge's findings and conclusions about SOR 1.e. are not at issue on appeal.