Date: January 5, 2023

In the matter of:	)	
-----	)	ISCR Case No. 21-01842
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B Norman, Esq., Chief Department Counsel

FOR APPLICANT
Daniel Conway, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 5, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline F (Financial Considerations) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 15, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law insofar as it ran contrary to the weight of the record evidence. The Judge's favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings and Analysis

Applicant has worked for his current employer, a Defense contractor, since 2017. He served in the National Guard from 2004 until 2014, during which time he deployed twice to the Middle East in support of U.S. military objectives. He holds an 80% disability rating from the VA. Divorced, he has a child from his former marriage.

Applicant has experienced problems with alcohol, due in part from post traumatic stress disorder (PTSD) resulting from his combat tours. He was twice convicted of DWI, once in 2016 and again in 2019, his sentence for the latter conviction including probation that ends in March 2023. After the 2019 incident, Applicant entered into a treatment program managed by the VA. His therapist stated that he had made significant progress, had developed coping strategies for managing his urge for alcohol, and had displayed an awareness of how alcohol had damaged his wellbeing. He underwent another VA program, this one monitored by the court as part of his probation. He graduated in March 2022 and completed aftercare the following October.

Applicant initially testified that he had abstained from alcohol since March 2021. However, he subsequently admitted that he had consumed alcohol in June 2022, in violation of his probation. He stated that he had experienced "significant stressors," including a death in the family, and had consumed about four beers. Decision at 3. As a consequence of his relapse, the court imposed additional monitoring. The Judge stated that he would consider this non-alleged misconduct on the issue of mitigation. Applicant has been abstinent ever since.

The Judge noted evidence of Applicant's PTSD and stated that he gave considerable weight to his service to the U.S. He also noted the counseling that Applicant had received and that his most recent offense occurred three years before the hearing. However, he cited to evidence that Applicant remains on probation until early 2023 and that he had violated the terms of that probation by consuming alcohol. The Judge stated that he had lingering doubts about Applicant's eligibility and suitability for a security clearance.

Discussion

Applicant's appeal brief includes matters from outside the record, including character references. We are not permitted to consider new evidence on appeal. Directive ¶ E3.1.29. In presenting his appeal arguments, Applicant draws heavily upon the Adjudicative Desk Reference (ADR). However, DOHA Judges must decide cases based upon the Adjudicative Guidelines and the record evidence, not the ADR. *See, e.g.*, ISCR Case No. 07-02253 at 3 (App. Bd. Mar. 28, 2008). The ADR states, "it is not U.S. Government policy and may not be cited as authority for denial or revocation of access." ADR, Version 4, March 2014, at 2. The ADR is not controlling or determinative authority.

The gravamen of Applicant's argument on appeal is that his one instance of drinking following his 2019 conviction and while on probation should not be determinative on the question of clearance eligibility. He argues that an isolated relapse is not unusual for persons in Applicant's circumstances and does not outweigh Applicant's demonstrated efforts to address his problems. In fact, the Judge made findings about such favorable things as Applicant's military service, the

years that had elapsed since his most recent offense, and the PTSD that was at the root of his misconduct, addressing them in the course of his analysis. However, the Judge's reliance on Applicant's probation violation was not misplaced. In the past, we noted that resumption of security-significant conduct in violation of probation requirements can undercut an applicant's effort to demonstrate rehabilitation. *See, e.g.,* ISCR Case No. 98-0223 at 4 (App. Bd. Oct. 29, 1998). In the case before us, evidence that Applicant self-medicated with alcohol while on probation could raise in a reasonable mind questions about his impulse control, which is a central aspect of the Guideline G security concern. *See* Directive, Encl. 2, App. A ¶ 21. Moreover, failure to comply with court-mandated abstinence bears upon the extent to which Applicant may be lacking in the ability or willingness to comply with rules and regulations. Such compliance is at the heart of Guideline J. *See* Directive, Encl. 2, App. A ¶ 30. Applicant's arguments on appeal consist essentially of a disagreement with the Judge's weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 20-03646 at 3 (App. Bd. Nov. 29, 2022). Applicant's arguments are not sufficient to undermine the Judge's decision.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has cited to no harmful error in the Judge's findings or analysis. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED.**

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board