KEYWORD: Guideline G

DIGEST: Applicant challenges the Judge's comment that there is no strong evidence that he will remain sober for a year or two, if that long. He notes that the Judge herself found that Applicant has been sober for two years and intends to remain so, arguing that the challenged comment is arbitrary and capricious. However, evidence that Applicant has twice been diagnosed as alcohol dependent and twice has failed to maintain sobriety, along with the Judge's finding that he currently does not have a sponsor and intends to obtain counseling sometime in the future, support her overall conclusion that Applicant has not demonstrated sufficient rehabilitation to overcome the security concerns in his case. Therefore, any error in the challenged statement is harmless, in that it did not likely affect the overall outcome of the case. Adverse decision affirmed.

CASENO: 18-00782.a1

DATE: 02/15/2019

DATE: February 15, 2019

In Re:	)	
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	)	
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 10, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 26, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the U.S. military from 1987 to 2007, retiring as an 0-5. During his career he deployed seven times, four of which were to combat zones. He has held a clearance for thirty years without incident or concern.

Applicant began consuming alcohol at age sixteen. He became a social drinker while in the military and had no problems with alcohol during his service. However, after he retired, he experienced marital problems, and he increased his consumption of alcohol to cope. He drank to self-medicate, and his family and others told him that he had a problem. In 2009, he underwent thirty days of inpatient alcohol treatment at a Veterans Administration medical clinic. He was diagnosed with alcohol dependence and recommended to attend Alcoholics Anonymous, though there was no other aftercare program. Applicant remained sober for a year.

Applicant relapsed in 2010, after his wife told him that she wanted a divorce. In addition, he moved to a new state in order to take a job; close family members died, including his father; two friends still on active duty were killed while serving overseas; and two friends took their own lives. As a consequence, Applicant resumed drinking. In 2014, he entered another thirty-day inpatient treatment program, in which he was again diagnosed with alcohol dependence. After this treatment he was sober for about a year and a half.

Applicant's daughter moved in with him and did not get along with his live-in girlfriend, who was abusing prescription drugs. He advised his counselor about his relapse. Applicant began following his counselor's advice, sleeping regularly, exercising, and eating a proper diet. He currently does not have a sponsor but does believe that he has a strong support system. He plans to seek out a therapist for one-on-one counseling in the near future. He has not consumed alcohol in about two years. He has no intention of resuming drinking.

He states that he was not aware of his two diagnoses of alcohol dependence. He states that he was only advised to avoid alcohol abuse and to avoid situations that might trigger him to drink. Applicant was evaluated by a physician, who characterized his program as strong and concluded that

his alcohol dependence is currently in remission. Applicant underwent a psychological evaluation in 2018, receiving a diagnosis of alcohol abuse in remission.

Applicant enjoys an excellent reputation for his trustworthiness and reliability, as well as his professionalism and work ethic. He is described as articulate and intelligent. His friends and colleagues recommend that he retain his clearance.

The Judge's Analysis

The Judge concluded that Applicant failed to present sufficient evidence of mitigation. She noted that he has been sober for about two years. However, she concluded that, given the extent of his problem, including multiple relapses, these two years are not enough to show that his security-significant conduct is behind him. In the whole-person analysis, the Judge acknowledged the difficulties Applicant has faced that underlie his alcohol problem. She pointed out that Applicant had undergone two inpatient alcohol treatment programs that diagnosed him as alcohol dependent, but, after a short period of sobriety, he returned to drinking. "There is no strong evidence in the record to show that he will remain sober for any period more than a year or two, if that long." Decision at 7.

Discussion

Applicant cites to various aspects of the record that he believes the Judge did not consider or that she failed properly to weigh. These include his divorce, the deaths of several persons closest to him, the contentious relationship between his daughter and his girlfriend, his extensive sobriety, his current sobriety, and his recent professional assessment. The Judge made findings about these things and discussed many of them in her analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-00109 at 3 (App. Bd. Dec. 12, 2018).

Applicant challenges the Judge's comment that there is no strong evidence that he will remain sober for a year or two, if that long. He notes that the Judge herself found that Applicant has been sober for two years and intends to remain so, arguing that the challenged comment is arbitrary and capricious. However, evidence that Applicant has twice been diagnosed as alcohol dependent and twice has failed to maintain sobriety, along with the Judge's finding that he currently does not have a sponsor and intends to obtain counseling sometime in the future, support her overall conclusion that Applicant has not demonstrated sufficient rehabilitation to overcome the security concerns in his case. Therefore, any error in the challenged statement is harmless, in that it did not likely affect the overall outcome of the case. *See, e.g.*, ISCR Case No.17-01181 at 4 (App. Bd. Apr. 30, 2018).

We give due consideration to the hearing office cases that Applicant has cited. However, each case must be decided on its own merits. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.,* ISCR Case No. 17-03363 at 3 (App. Bd. Nov. 29, 2018). The gravamen of Applicant's brief is a challenge to the manner in which the Judge weighed

the evidence. An ability to argue for a different interpretation of the record 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. 17-02463 at 2 (App. Bd. Sep. 10, 2018).[1]

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. 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."

[1]Applicant argues that the Judge lacked the requisite impartiality. We have considered Applicant's argument in light of the entirety of the record. We conclude that Applicant has not rebutted the presumption that the Judge was unbiased. *See, e.g.*, ISCR Case No. 17-02391 at 2 (App. Bd. Aug. 7, 2018).

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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