

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 21, 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 decision on the written record. On January 15, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 and Analysis

Applicant, who is 49 years old, has been employed by a government contractor since 2016. She retired from the Air National Guard in 2008 and has held various security clearances. She has been convicted of either driving while intoxicated or operating a vehicle under the influence of alcohol on four occasions. These offenses occurred in 1995, 2007, 2016, and 2017. After her 2007 arrest, she was diagnosed as an alcohol abuser and attended follow-up treatment. The 2016 and 2017 incidents involved traffic accidents. During the 2016 incident, she lost control of her vehicle and hit a pole; a breathalyzer revealed her blood alcohol content was .334 %. She participated in alcohol treatment programs following the last two incidents. She provided a recent letter from a therapist stating she no longer drinks alcohol and resolved personal issues satisfactorily. The therapist indicated she is doing extremely well and is not a threat to national security.

Applicant has a history of excessive alcohol use and driving while impaired. She has not provided sufficient evidence of abstinence or the ability to drink responsibly. The record is devoid of details about her treatment and evidence establishing a change in behavior. She has had lapses following treatment. The Judge was not convinced Applicant’s claimed abstinence was credible or would be sustained.

Discussion

Applicant contends her security investigation was not complete and thorough.¹ She indicates that she assumed the investigation was thorough and supplied to the Judge. She requests that she be provided with all documentation that was presented to the Judge. The record, however, reflects that she was previously provided with that documentation. On July 19, 2018, Department Counsel mailed to Applicant the File of Relevant Material (FORM). The FORM notified her: “If you do not file any objections or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination **based solely on this FORM.**” [Emphasis added.] FORM at 3. In responding to the FORM, Applicant submitted a letter from her to the Judge. The Judge’s decision was based on the FORM and Applicant’s response to it. After having admitted the SOR allegations, the burden was on Applicant to mitigate those security

¹ The Appeal Board has no authority to rule on the sufficiency of a security clearance investigation. *See, e.g.*, ISCR Case No. 14-00715 at 3 (App. Bd. Dec. 10, 2014).

concerns. Directive ¶ E3.1.15. If she wanted the Judge to consider matters that were not in the FORM, it was her responsibility to present such matters to him.

Applicant has not identified any harmful error in the Judge’s decision. She makes arguments about her alcohol treatment that are based incorrectly on her assumption that those matters were before the Judge for consideration. She does correctly note that the Judge erred in finding she was arrested in October 2017, instead of May 2017; however, this error was harmless because it likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15084 at 3 (App. Bd. Jul. 25, 2013). Applicant also requests “more time to acquire the necessary documentation to complete the Appeal.” Appeal Brief at 1. The Board has no authority to grant an applicant a continuance in order to develop additional favorable evidence. *See, e.g.*, ISCR Case No. 14-00151 at 3 (App. Bd. Sep. 12, 2014). Moreover, the Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

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.”

Order

The Decision is **AFFIRMED**.

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

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

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board