



(Directive). Applicant requested a hearing. On March 31, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge's favorable decision was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

### **The Judge's Findings of Fact**

Applicant works for a Federal contractor. She was granted a position of trust in 2003 and has held it ever since. Applicant's SOR alleged numerous offenses, including many that involved alcohol. In 2006, she was charged with drinking in a retail area and with assault. Both charges were *nolle prosequi*. Approximately two years later, she was charged with driving while impaired, second degree assault, disorderly conduct, and failure to obey a lawful order. She pled guilty to the alcohol offense and received probation before judgment. During her period of probation she was required to abstain from alcohol and completed the probation successfully. Applicant also received alcohol-related counseling and was diagnosed with alcohol use disorder-mild.

In early 2011, Applicant was again arrested for driving while impaired by alcohol. She pled guilty to the charge and received supervised probation. She underwent alcohol-related counseling and was diagnosed with alcohol use disorder-severe. She was required to remain abstinent during the probation period.

In 2014, Applicant was arrested again for driving while impaired by alcohol. Found guilty, she was sentenced to 60 days confinement, with 58 days suspended, placed on a weekender's work program, and on supervised probation and parole. She successfully completed a 48-week counseling program.

In 2017, Applicant was arrested and charged with driving under the influence of alcohol. Convicted of this offense, she was sentenced to one year of supervised probation. Other related offenses—failure to display her driver's license, failure to drive in "right half," failure to obey a stop sign, failure to respond to signal by police, and making a left turn from an improper position—were placed in an inactive docket after entry of her guilty plea.

Later that year, Applicant was arrested for driving a vehicle not equipped with an ignition interlock. The charge was *nolle prosequi*. However, she pled guilty to driving on a suspended license. She was sentenced to a year of confinement, suspended for 30 days. She appealed and was ultimately sentenced to two years of supervised probation and a \$1,000 fine. Still later the same year, Applicant was charged with failure to display her drivers license and to driving without a license. These charges were *nolle prosequi*, apparently as a result of a plea agreement regarding the previously-discussed offense.

In early 2018, Applicant was admitted to a state-sponsored recovery center. She attended various meetings, group therapy sessions, and Alcoholics Anonymous. There is no evidence of her return to drinking during this program. She was diagnosed with alcohol use disorder, moderate-severe. Her prognosis for continued sobriety is considered to be good.

Applicant's supervisors describe her as an excellent worker—conscientious, ethical, and reliable. She disclosed her alcohol offenses and treatment to them. She has expressed remorse for her offenses and states that she has been abstinent since May 2017. Her treatment programs have included medications and therapy to provide her with the tools necessary to stop drinking. She has made lifestyle changes. She lives with her family, who provide emotional support to her. She states that she is working very hard on her recovery. She is concerned about the financial consequences if she should not get a clearance.

### **The Judge's Analysis**

The Judge noted that Applicant's last DUI occurred in 2017, "and there is no evidence of any alcohol-related misconduct" after then. Decision at 7. He cited to her rehabilitation program, her changed personal circumstances, her love for her job and her concern over the consequences should she be denied access to classified information. He stated that she clearly understands that her eligibility for a clearance depends on continued sobriety. The Judge concluded that it is unlikely that Applicant will engage in alcohol-related misconduct in the future. He stated that Applicant "has demonstrated a sufficient pattern of modified behavior" to show that her security-significant conduct is behind her. Decision at 8.

### **Discussion**

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. The applicant has the burden of persuasion as to obtaining a favorable decision. Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

Department Counsel contends that the Judge's favorable decision is not supported by the weight of the record evidence, viewed as a totality. We find this argument persuasive. We note the following evidence, drawn from the Judge's findings and from the record:

1. In 2006, Applicant was charged with drinking in a retail location and with assault. The assault charge arose from her interaction with law enforcement personnel. Decision at 2; Tr. at 32; Government Exhibit (GE) 3, State District Court Case Information; GE 2, Interview Summary Included in Answers to Interrogatories.
2. Applicant was charged four times for operating a vehicle under the influence of alcohol. In early 2018, Applicant served two months in jail for her 2017 DUI offense. Decision at 2-3; GE 4-7; State District Court Case Information; Tr. at 53-54; GE 2 at 2.
3. Applicant received alcohol-related counseling as a consequence of her offenses. Her counselors advised her to abstain from alcohol. "[Q]: By your recollection, do you recall if they told you . . . to abstain from future alcohol use? To not use? [A]: Yeah. Every single treatment, yes, they have." Tr. at 43-44.
4. Despite these recommendations, Applicant resumed consuming alcohol and engaged in subsequent alcohol-related misconduct, most recently in 2017. Decision at 2-4; GE 5-7, State District Court Case Information.
5. Applicant was diagnosed on at least three occasions with alcohol use disorder of varying degrees of severity. Decision at 2-3.
6. Applicant was charged with other offenses ancillary to her DUI convictions, for example, driving without a license, failing to have an ignition interlock device, and various traffic offenses. Decision at 3-4; GE 7-10, State District Court Case Information.
7. Although she testified that she has been abstinent since her 2017 DUI and is working hard on her future, she also testified that she could "never say that this is over and that I will never, ever in my life I will drink again because I will be lying to you here." Tr. at 62.

As noted above, once the Government presents substantial evidence of security concerns, the applicant bears the burden of persuasion that he or she should have a clearance. A clearance adjudication must be based upon an examination of the record as a whole, in light of the *Egan* standard. The Directive requires that any doubt about an applicant's eligibility for a clearance must be resolved in favor of the national security. Directive, Encl. 2, App. A ¶ 2(b). We conclude that the evidence in this case does not support the Judge's favorable analysis.

The security concerns under both Guidelines cited in Applicant's SOR provide that the misuse of alcohol and criminal offenses raise questions about an applicant's judgment, trustworthiness, and reliability. Directive, Encl. 2, App. A ¶¶ 21, 30. Under the facts of the case before us, insofar as both the Alcohol Consumption and the Criminal Conduct allegations are rooted in the abuse of alcohol, the record presents substantial reasons to question whether Applicant has problems with impulse control that go to the heart of her ability to protect classified information. We note the Judge's findings that Applicant has not consumed alcohol since her 2017 DUI. However, as we have stated before, the length of time through which an applicant might establish that his or her offenses have been consigned to the past varies from case to case. *See, e.g.*, ISCR Case No. 18-01926 at (App. Bd. Sep. 20, 2019). In Applicant's case, the record shows that Applicant has repeatedly resumed consuming alcohol despite having been advised by her counselors to abstain altogether. Moreover, her alcohol offenses were exacerbated by a host of other infractions, including assault and, about three months after her last DUI, driving under a license that had been suspended as a result of that offense. These other infractions must be brought to bear in examining the extent to which Applicant has established mitigation, particularly her testimony that as of the date of the hearing she still did not have an unrestricted driver's license. Tr. at 60. That she is still undergoing some measure of penalty for her security-significant conduct is inconsistent with Judge's conclusion that enough time had passed between her misconduct and the close of the record to show that her problems are unlikely to recur, that she has established rehabilitation, and that her misconduct does not impugn her reliability, trustworthiness, and good judgment.

Additionally, we have considered the Judge's findings about Applicant's most recent alcohol treatment, the laudatory views of her supervisors, and the Judge's conclusion that she is genuinely remorseful. Given the extent of Applicant's offenses, their occurrence over more than a decade, and her having repeatedly failed to follow professional advice to abstain from future alcohol consumption, we conclude that the evidence Applicant has submitted is not sufficient to mitigate the concerns raised in her SOR under the standard set forth in *Egan*. The Judge's decision runs contrary to the weight of the record evidence and is not sustainable.

**Order**

The Decision is **REVERSED**.

Signed: Michael Y. Ra'anan  
Michael Y. 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