

KEYWORD: Guideline G; Guideline J

DIGEST: In his appeal brief, Applicant does not challenge any of the Judge’s findings of fact. Instead, he contends the Judge did not consider all of the evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. The Judge discussed the matters that Applicant is raising on appeal. His arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision is affirmed.

CASE NO: 19-01400.a1

DATE: 06/03/2020

DATE: June 3, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-01400
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Austin J. Lewis, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 26, 2019, 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 September 30, 2019, Department Counsel amended the SOR by adding another Guideline G allegation and a Guideline J (Criminal Conduct) allegation. On March 12, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge summarized the case as follows:

Applicant had four alcohol-related arrests between 1987 and 2018. He is currently on probation for the last offense, and stopped drinking only one month before the record closed. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is denied. [Decision at 1.]

In his appeal brief, Applicant does not challenge any of the Judge’s findings of fact. Instead, he contends the Judge did not consider all of the evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. For example, he notes that he has suffered since the death of his wife in 2017 and argues:

The Administrative Judge discounted testimony that the incident at the heart of the issue, the DUI arrest in 2018, was [Applicant’s] first since 1995 and does not represent a larger pattern of misconduct. The Administrative Judge also discounted testimony that [Applicant] will never drink and drive again and is actively working toward sobriety generally. Further the Administrative Judge discounted the fact that [Applicant] had completed counseling and treatment programs related to the behavior. [Appeal Brief at 5-6.]

The Judge discussed the matters that Applicant is raising on appeal. His arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 17-02488 at 3 (App. Bd. Aug. 30, 2018). Additionally, the Judge complied with the requirements of the Directive in his whole-person analysis by considering the totality of the evidence in reaching his decision. Also, an ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 10-07127 at 3 (App. Bd. Dec. 19, 2012).

Applicant has failed to establish that the Judge committed any harmful error. 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 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