

KEYWORD: Guideline J; Guideline G; Guideline E

DIGEST: We gave due consideration to the Hearing Office cases that Applicant has cited in support of his arguments, but they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. Id. At 3-4. The cited cases are easily distinguishable from the present case. Moreover, the Appeal Board recently reversed one of the three Hearing Office cases that Applicant cited in support of his arguments. We further conclude the Judge considered the totality of the evidence in compliance with the whole-person analysis requirements. Adverse decision affirmed.

CASE NO: 19-01495.a1

DATE: 09/30/2020

DATE: September 30, 2020

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In Re:)	
-----)	ISCR Case No. 19-01495
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Joseph D. Jordan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 21, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 8, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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 in his mid-30s, is married and has a young child. He has a master’s degree. He has held a security clearance for about 14 years and has been in his current position for about two years.

In 2010, Applicant was arrested for driving under the influence (DUI) even though his breathalyzer reading was below the legal threshold. This matter was dropped after his lawyer made a court appearance. In 2012, he was charged with DUI. His attorney negotiated a plea agreement that resulted in a deferred sentencing agreement. Applicant successfully participated in a diversion program.

In 2014, Applicant was charged with DUI. He was convicted of that offense and again successfully completed a diversion program. He was given a good prognosis and was advised not to drink and drive in the future. He decided to abstain permanently from alcohol consumption and maintained that commitment for over three years.

In early 2018, he consumed alcohol at a party and then went to a bar with friends. He was stopped by the police while driving home. He was convicted of reckless driving and breathalyser refusal, and his driver’s licence was suspended for three years. Knowing that the reckless driving conviction could lead to his employment termination, he agreed to resign from his position to keep his employment record clean.

Applicant has abstained from alcohol consumption since his 2018 incident. He and his wife no longer have alcohol in their house. He has received extensive counseling and does not believe he has an alcohol problem. He “maintains that he has never driven a vehicle under the influence of alcohol[.]” Decision at 3. He signed a letter of intent not to return to drinking. A counselor has assessed him as not being in need of treatment.

Applicant has been arrested four times for alcohol-related offenses within eight years. Although the first incident resulted in a dismissal of the charge, the other incidents resulted in him participating in alternative disposition programs and being convicted of refusing a breathalyser. His driver's license remains suspended. The security concerns arising from his arrests are partially mitigated due to the passage of time. His previous attempt at abstinence lasted about three years. It is too early to conclude that he has established a clear pattern of abstinence or that his alcohol problems are unlikely to recur. More time is needed for him to establish current reliability and good judgment.

Discussion

In his appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the evidence and the Judge failed to properly apply the mitigating conditions and whole-person concept. In making those arguments, he asserts that the Judge did not give proper weight to certain evidence, including his signed statement of intent to abstain from alcohol, his voluntary wearing of a device that monitors alcohol consumption, his participation in alcohol counseling, and the amount of time that has elapsed since he last consumed alcohol. He also challenges the Judge's conclusion that more time is required for him to demonstrate reform and rehabilitation. His arguments, however, 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).

We gave due consideration to the Hearing Office cases that Applicant has cited in support of his arguments, but they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* at 3-4. The cited cases are easily distinguishable from the present case. Moreover, the Appeal Board recently reversed one of the three Hearing Office cases that Applicant cited in support of his arguments. *See* ISCR Case No. 19-00381 (App. Bd. Aug. 10, 2020). We further conclude the Judge considered the totality of the evidence in compliance with the whole-person analysis requirements. *See* Directive, Encl. 2, App. A ¶¶ 2(a) and 2(d).

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 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