



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

Date: January 9, 2023

In the matter of:)	
)	
-----)	ISCR Case No. 20-02676
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 26, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 2, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found against Applicant on 11 Guideline G allegations and 9 cross-alleged Guideline J allegations. These asserted that Applicant was arrested and charged with various alcohol-related offenses between 1999 and 2016, including driving under the influence (DUI) on six occasions, fleeing or evading police, breaking and entering, illegal entry and larceny, and criminal trespass. Applicant pled guilty to many of those charges or to lesser offenses. His most recent alcohol-related driving offense was in 2016. The SOR also alleged that Applicant was

diagnosed with alcohol abuse in 2003 and enrolled in a substance abuse program, that he violated state probation by testing positive during a random alcohol test in 2015, and that he discontinued behavioral health treatment against advice in 2018 and was discharged with a diagnosis of alcohol dependence. In responding to the SOR, Applicant admitted each of these allegations with clarifying and mitigating information.

On appeal, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge did not consider all of the evidence, misapplied the mitigating conditions, and misweighed the evidence. For example, he argues the alleged security concerns were mitigated due to the passage of time since his last alcohol-related offense in 2016. In this regard, the Judge noted Applicant previously went eight years (2003-2011) without committing any alcohol-related offenses. In general, Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence, which is a matter within the special province of the Judge as the trier of fact. *See, e.g.*, ISCR Case No. 18-00857 at 4 (App. Bd. May 8, 2019). None of his arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 21-01169 at 5 (App. Bd. May 13, 2022). Additionally, Applicant's arguments based on Hearing Office decisions involving marijuana usage are misplaced and have no merit.

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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 national security."

Order

The Decision is **AFFIRMED**.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board