

Date: January 5, 2023

In the matter of:)	
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-----)	ISCR Case No. 22-00792
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 15, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 21, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Bayard Glendon denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge’s Findings and Analysis

Applicant is in his early 40s and is married with five children. He retired from the U.S. military in 2019, having earned a bachelor’s degree while on active duty. He works for a Defense contractor and has held a clearance since 1999.

Applicant has received outpatient treatment for alcohol abuse. Although he consumed alcohol prior to 2018, in that year he became stressed due to his impending retirement and the need to find post-military employment. He began drinking heavily, and by early 2019 he was consuming a bottle of wine a night and two bottles each weekend night. His drinking began to affect his family, and, upon the advice of a physician, he voluntarily entered into a private-sector treatment program in February 2019, which diagnosed him as suffering from Alcohol Use Disorder (Severe).

At the time of his discharge from the outpatient program in April 2019, Applicant reported that he was experiencing tremors and cravings for alcohol. In the initial stages of the program, Applicant had been prescribed a drug to reduce these cravings. His discharge documents state that he was encouraged to continue in an aftercare program, to abstain from alcohol, and to maintain attendance at a recovery group such as AA. Applicant's prognosis was characterized as "Fair." Decision at 3. Applicant discontinued aftercare in early 2020, by which point he was no longer abstaining from drinking. Additionally, he never filled the prescription for the drug that would reduce his cravings for alcohol. Applicant claimed that he continued with AA for a period, had completed the 12 steps, and had a sponsor.

Applicant testified that he now consumes alcohol only at social events, limiting himself to no more than three drinks. He has promised his family never to return to his old drinking habits. The drug and alcohol program advisor (DAPA) for Applicant's former command submitted a character reference. This official stated that he saw no reason to be concerned that Applicant's drinking habits would affect his job performance. His current supervisor lauded his duty performance. The record contains no evidence of a professional opinion regarding Applicant's use of alcohol.

In the Analysis portion of the Decision, the Judge concluded that too little time had passed since his security-significant conduct to conclude that Applicant has shown rehabilitation. The Judge cited to evidence that Applicant continues to consume alcohol despite a recommendation that he abstain, that he is not currently participating in programs such as AA, and that Applicant had not provided a professional opinion as to the current applicability of the diagnosis and opinions contained in the record. He also stated that there is no evidence other than Applicant's own testimony regarding his current levels of alcohol consumption. The Judge concluded that Applicant had not met his burden of persuasion as to mitigation.

Discussion

Applicant contends that the Judge made errors in his findings of fact. For example, he states that at the time he was discharged from the alcohol treatment program he was no longer suffering from tremors. Government Exhibit 4, Discharge Summary at 2, appears to state that tremors were symptomatic at the time Applicant entered the program, making no reference to such a condition at the time of discharge. This finding is erroneous. Applicant also contends that the Judge erred in finding that a letter was submitted from a DAPA official at a former command. The record does not support that finding. The letter states, "[Applicant] worked directly for me for the duration of my time here at [the organization] from June 2019 to current date." Applicant Exhibit C at 1. Any errors in the Judge's decision did not likely affect the outcome of the decision.

Therefore, they are harmless. *See, e.g.*, ISCR Case No. 18-02581 at 3 (App. Bd. Jan. 14, 2020). Applicant has cited to no harmful errors in the findings. The Judge’s material findings of security concern are supported by substantial evidence. *See* ISCR Case No. 18-01564 at 3 (App. Bd. May 30, 2019).

Applicant’s brief consists in large measure of a challenge the Judge’s weighing of the evidence. However, a disagreement with the weight the Judge assigned to the record evidence is not sufficient 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. 18-02872 at 3 (App. Bd. Jan. 15, 2020). The Judge’s findings and the record evidence underlying those findings show that Applicant was diagnosed with Alcohol Use Disorder (Severe), with symptoms including tremors; that treatment providers recommended that Applicant abstain from consuming alcohol; that despite this recommendation Applicant continues to consume alcohol; and that there is no corroborating evidence supporting his testimony about his current levels of consumption. It is reasonable for a Judge to expect an applicant to corroborate his claims regarding efforts at mitigation. *See, e.g.*, ISCR Case No. 17-01193 at 4 (App. Bd. Jan 22, 2019). Given the totality of the evidence, we find no reason to conclude that the Judge’s adverse decision was erroneous.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has cited to no harmful error in the Judge’s findings or analysis. 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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board