

The Judge's Findings of Fact and Analysis

Applicant is in his mid-fifties and twice-divorced, with three adult children. He served in the military from 1985 through 1988.

Under Guideline G, the SOR alleged five arrests for driving under the influence, with the most recent being December 2019, one alcohol-related disorderly conduct violation, excessive consumption of alcohol from 1990 through 2019, and a 2021 diagnosis of Alcohol Use Disorder. The alcohol offenses were cross-alleged under Guideline J, as well as an additional 1998 charge of obtaining a hunting license under false pretenses. The alcohol offenses and false pretenses offense were cross-alleged under Guideline E. Applicant admitted all allegations, and the Judge found against him on all.

In his background clearance interview in July 2019, Applicant discussed his alcohol-related offenses, described his drinking pattern, and stated his intent not to drink to excess in the future. Five months later, in December 2019, Applicant was arrested for Extreme DUI with a blood alcohol content above .20%. He pleaded guilty and was sentenced to 2 days in jail, 22 days of work release and 96 hours of home detention. Additionally, he attended DUI classes, completed alcohol screening, and paid a fine. Applicant stated his intent to abstain from alcohol completely after his December 2019 arrest. In April 2021, he was diagnosed with Alcohol Use Disorder. In concluding that Applicant did not mitigate the alcohol consumption, criminal conduct, and personal conduct security concerns, the Judge found that:

Applicant acknowledged his lapses in judgment due to his excessive use of alcohol and a long history of criminal and alcohol-related violations. This pattern demonstrated that he was unable to learn from his mistakes and he places his personal interests before his legal obligations and responsibilities. He also failed to provide supporting documentation concerning his alcohol counseling and treatment following a 2021 diagnosis of alcohol use disorder. I cannot determine if he has successfully completed treatment and if he has fully complied with the treatment recommendations. [Decision at 8.]

Discussion

Applicant has not challenged any of the Judge's specific findings of fact. Through counsel, the crux of Applicant's argument is that he has abstained from alcohol since his December 2019 DUI and that the Judge failed to give due weight to his abstinence and to the passage of time since his last incident. We turn first to the issue of abstinence. Both in his November 2020 background interview and in his response (undated) to DOHA interrogatories, Applicant noted that he stopped drinking after the December 2019 DUI. GE 4 at 6 and 23. The Judge, however, determined that there was "insufficient information in the record to demonstrate Applicant's claim that he has successfully abstained from using alcohol since his most recent DUI arrest in December 2019." Decision at 5. That is, the Judge determined that Applicant's statements regarding abstinence were not adequately corroborated in light of there being "no information about his alcohol treatment following his 2021 diagnosis of alcohol use disorder, details of his rehabilitation, or even a future favorable prognosis." *Id.* An administrative judge is not required to accept an applicant's

representation merely because it is un rebutted. *See, e.g.*, ISCR Case No. 99-0005 at 3 (App. Bd. Apr. 19, 2000). The Judge was well within her authority to determine that Applicant's assertions of abstinence lacked corroboration and to decide the weight to be given to those assertions.

We turn next to Applicant's argument that the Judge did not consider the passage of time as a mitigating factor. The Board has repeatedly declined to furnish "bright-line" guidance regarding the concept of recency. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. Our review of the record and decision establishes that the Judge carefully considered all evidence in mitigation, including the passage of time since the December 2019 conviction but determined it was insufficient—for now—given the long history of DUIs and the elevated BAC of the most recent arrest. In light of the record before her, the Judge's determination that insufficient time has passed to conclude that Applicant is unlikely to engage in further misconduct was not arbitrary or capricious. *See, e.g.*, ISCR Case No. 18-02586 at 3 (App. Bd. Sep. 9, 2019).

Applicant's counsel also asserts that the Judge failed to consider Applicant's completion of a "treatment plan" and "treatment programs." Appeal Brief at 6, 9, 10. However, Applicant's Counsel cites to no evidence in the record supporting these contentions, as required by Directive E3.1.30, and our review of the record reveals no evidence that Applicant was ever enrolled in, or completed, such a program. Instead, the record supports the Judge's finding that Applicant participated in a court-ordered DUI class, which was apparently online, and completed a court-ordered alcohol screening. GE 4 at 23; GE 5 at 2.

None of Applicant's 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. Moreover, the Judge complied with the requirements of the Directive in her whole-person analysis by considering all evidence of record in reaching her decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Applicant has 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: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board