

Date: May 10, 2023

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 In the matter of:)
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)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 21-02230

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 August 8, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On November 21, 2022, the Defense Office of Hearings and Appeals (DOHA) provided Applicant the Government’s File of Relevant Material (FORM) and afforded him an opportunity to file objections or submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. On March 15, 2023, after considering the record, DOHA Administrative Judge Shari Dam denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For the reasons stated below, we affirm.

Judge’s Findings and Analysis

Applicant is 34 and has worked for a defense contractor since April 2020. In August 2007, he was arrested and charged with Driving Under the Influence of Alcohol or Drugs (DUI) and was subsequently convicted and sentenced to, among other things, one year of probation. Months later, in April 2008, he was charged with Minor in Possession of Alcohol, for which he was convicted, and his driver’s license was suspended for 30 days. In August 2009, Applicant was arrested again

for DUI and Refusal to Submit to a Preliminary Breath Test (Refusal); however, he failed to appear for hearing and a warrant was issued for his arrest in February 2010. He was subsequently convicted of the DUI charge in April 2013, sentenced to 12 months of probation, and ordered to complete an alcohol and drug treatment program, participate in Alcoholics Anonymous, install an interlock device in his car, and complete a DUI victim panel. Applicant began a six-month outpatient treatment program that same month, during which an evaluator recommended that he abstain from alcohol consumption.

In November 2014, Applicant was charged once again with DUI, Refusal, and Failure to Maintain a Single Lane. He again failed to appear for hearing and another warrant was issued for his arrest in September 2015. He was served with the warrant in April 2018, at which time he was also charged with Possession of Marijuana and Use/Possession with Intent to Use. Applicant pled guilty to DUI (2nd conviction) and Incapable of Safely Driving in June 2018 and was sentenced to five days in jail and probation for either 12 months or until he completed the conditions of probation, whichever occurred first. In January 2019, Applicant was charged with speeding and various driver's license infractions. He was also charged with violating the terms of his June 2018 probation, for which he served two days in jail. In April 2019, Applicant was charged with Tampering with an Ignition Interlock Device, which he denied, but was required to serve two days in jail for again violating the terms of his June 2018 probation. Applicant was released from probation by court order in June 2019.

The SOR alleged concerns related to the foregoing charges and conduct, all which Applicant admitted with explanations. In determining that none of the mitigating conditions fully applied, the Judge found that between 2014 and 2019, Applicant had “been involved in the legal system as a consequence of consuming too much alcohol on more than one occasion” and that he had “not acknowledged that he has an alcohol problem, and he continues to consume alcohol with regularity despite being advised during his treatment in 2013 to abstain.” Decision at 6. The Judge concluded that the circumstances underlying Applicant's legal problems “were not so unusual that they are unlikely to recur,” that there was insufficient evidence to “verify that alcohol no longer presents a problem for him,” and that “[o]ther than his release from probation and the passage of time from 2019 without recurrence of criminal activity, there is no other evidence of successful rehabilitation.” *Id.* at 6, 7.

Discussion

On appeal, Applicant contends that “the Judge's unfavorable decision was reached in factual error” regarding his January 2019 driver's license infractions and speeding charge and his April 2019 charge for Tampering with an Ignition Interlock Device (SOR ¶¶ 1.e and 1.f). In support of his argument, he reiterates much of the same explanation he submitted in response to the SOR – that he had full driving privileges at the time he was pulled over for speeding and the license infractions were subsequently dismissed (Appeal Brief at 2; FORM Item 2 at 1), and that he was no longer required to have a breathalyzer device installed in his vehicle and that charge was also dismissed. Appeal Brief at 1; FORM Item 2 at 2.¹

¹ Applicant also submits supplemental evidence in the form of additional details regarding the two incidents. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant's challenges to the findings fail to establish any harmful error. The Judge's material findings of security concern are "based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence," and Applicant has cited to no harmful error in the Judge's findings. *See* ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Rather, the record supports the Judge's conclusion that Applicant "has a history of failing to comply with the law, rules, and regulations, as demonstrated by his past alcohol-related criminal conduct" and there "is insufficient evidence to establish permanent behavioral changes in Applicant's consumption of alcohol and compliance with the law." Decision at 8.

The Judge examined the relevant evidence and articulated a satisfactory explanation for her decision, and the record evidence is more than sufficient to support the Judge's findings and conclusions. 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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chair, Appeal Board

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

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board