



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: May 23, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 23-00199
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Alan Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 3, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guidelines G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing which was held on February 29, 2024. On March 28, 2024, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman concluded that it is not clearly consistent with the national interest to grant Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guidelines E and J, the SOR as amended alleged six convictions for driving while intoxicated or under the influence of alcohol, which occurred between August 1987 and January 2023. At the time of hearing, Applicant was on probation as a result of his most recent conviction. In his response to the SOR, Applicant admitted five convictions, denied one, and offered explanations for his conduct. The Administrative Judge found against Applicant as to each of these allegations. The SOR alleged under Guideline E that Applicant had falsified his responses to

Security Clearance Application questions pertaining to those arrests, as well as to a question regarding the circumstances under which he left a former employment position. The Judge found in Applicant's favor as to two of the arrest-related questions and against him regarding one of the arrests and the employment question.

On appeal, Applicant does not challenge the Judge's factual findings, but rather argues that the Judge did not appropriately weigh those facts relative to the Mitigating Conditions. However, the Judge adequately addressed Applicant's circumstances in his decision and reasonably concluded that Applicant's alcohol-related conduct is recent, that it did not occur under unusual circumstances, and that there was no evidence of successful rehabilitation. Decision at 8.

In essence, Applicant is advocating for an alternative weighing of the evidence. An applicant's disagreement with the judge's weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate that the judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *E.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, Applicant's arguments fail to rebut the presumption that the Judge considered all of the record evidence. The mere presence of some favorable or mitigating evidence does not require the Judge to make an overall favorable determination in the face of disqualifying conduct such as Applicant's. *See* ISCR Case No. 04-08975 at 2 (App. Bd. Aug. 4, 2006).

We have considered the entirety of the arguments contained in Applicant's appeal brief.¹ The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). His conclusions and adverse decision are 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." AG ¶ 2(b).

¹ Applicant cites to 10 C.F.R. §710, a Department of Energy (DOE) regulation that commits to administering its programs in a manner consistent with the traditional American concepts of justice and fairness. Appeal Brief at 10. Although the DOE regulation is wholly inapplicable to this proceeding, DOHA also is committed to fundamental principles of justice and fairness and nothing in the Judge's decision is inconsistent with those principles.

ORDER

The decision is **AFFIRMED**.

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board