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 29, 2024

In the matter of:	)	
	)	
-----	)	ISCR Case No. 23-00516
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 10, 2023, 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 H (Drug Involvement and Substance Misuse) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision based on the written record, without a hearing. The Government submitted a File of Relevant Material (FORM) containing the entire record and the Government's argument. Applicant was provided an opportunity to respond, but he did not submit a response. On April 3, 2024, Defense Office of Hearings and Appeals Administrative Judge Wilford H. Ross denied Applicant's security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline G that Applicant was arrested and charged with driving under the influence (DUI) on seven occasions. Under Guideline H, he was alleged to have used marijuana in 2014, while holding access to classified information or in a sensitive position, after testing positive during an employment urinalysis. Applicant admitted all of the SOR allegations,

and the Judge found against him on the Guideline G allegations, and in his favor on the Guideline H allegations.

On appeal, Applicant provides additional information to correct or clarify the record and argues for reconsideration of the decision to deny him security eligibility. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in his mid-sixties, divorced from his third wife, and has one adult child. He has been employed by a defense contractor since November 2020. He was arrested for DUI in 1983, but the charge was dismissed as *nolle prosequi*. He was arrested for DUI in 1991, pleaded no contest, and was sentenced to probation and fined. He was again arrested for DUI in 1995, was found guilty, and sentenced to probation and fined. He was arrested in 1998 for DUI and was found guilty, sentenced to probation, and fined. Again, he was arrested in 2000 for DUI, was found guilty and was fined. He was arrested in 2014 and 2020 for DUI, found guilty, and sentenced to probation, community service, and fined. Applicant also tested positive for marijuana during an employer-sponsored urinalysis in 2014 and retired, while holding access to classified information or in a sensitive position. He said it was his one and only use of marijuana.

Applicant elected to have a decision on the record without a hearing, so the Judge was unable to make a credibility assessment. Applicant did not submit any information in response to the FORM to show his work performance, current use of alcohol, or abstinence status. The Judge held that Applicant's history of excessive alcohol use and seven alcohol-related arrests and convictions were disqualifying and noted that no mitigating information was submitted in response to the FORM.

Discussion

On appeal, Applicant does not allege the Judge committed harmful error, rather he argues the Judge may not have had "sufficient information" about his "character and history." Appeal Brief at 1. He also corrected or supplemented the record with regard to the number of children he has, his work history, and corrections to official criminal history documents in the record. He also argues that he has abstained from alcohol and that his DUIs never interfered with his work.

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 conclude 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). The Appeal Board does not review cases *de novo*. The Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Directive ¶ E3.1.32. There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). After the Government produces evidence raising security concerns, an applicant bears the burden of persuasion concerning mitigation. *See* Directive ¶ E3.1.15. Because Applicant has not alleged such a harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which 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." AG ¶ 2(b).

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