



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: August 29, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 23-00570
)	
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 31, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline I (Psychological Conditions) 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). On July 1, 2024, after a hearing, Defense Office of Hearings and Appeals Administrative Judge Benjamin R. Dorsey denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline F that Applicant is indebted on a collection account totaling \$5,919. Under Guideline G, the SOR alleged that Applicant was arrested for driving while intoxicated (DUI) in 2019 and that his medical records from 2019 show a past history of alcohol dependence. Also under Guideline G, the SOR alleged that Applicant’s 2022 psychological assessment resulted in a diagnosis of alcohol use disorder, mild, and in a negative prognosis based on Applicant’s poor decision making and continued use of alcohol against medical advice. Under Guideline I, the SOR alleges that Applicant was involuntarily hospitalized in 2019 after expressing

suicidal ideation during his arrest for DUI and diagnosed with an adjustment disorder; and that his 2022 psychological evaluation noted an ongoing depression or other mood disorder and a history of at least one occurrence of implied suicidal ideation, resulting in a diagnosis of major depressive disorder.

In Applicant's SOR response, he admitted the financial debt and the DUI arrest and denied the remaining allegations. The Judge found against Applicant on all the SOR allegations except the two allegations under Guideline G involving the 2019 DUI arrest and the allegation of a medical history of alcohol dependence (SOR ¶¶ 2.a and 2.b). On appeal, Applicant argues that the Judge's findings of fact are not supported by the record evidence and the Judge failed to consider all of the evidence in mitigation, thus rendering the decision arbitrary, capricious, and contrary to law. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in his mid-50s and is employed by a defense contractor. He honorably served in the military from 1986 to 1994. The SOR alleged a credit-card debt totaling about \$6,000. The Judge found that Applicant did not provide sufficient evidence that he resolved the debt. Applicant was not sure whether he paid the account or whether it aged off his credit report. The Judge found that, regardless of whether the debt currently appears on his credit report, Applicant has failed to meet his burden to prove that his financial issues are resolved.

The Judge found in Applicant's favor on the SOR allegation in ¶ 2.a regarding his 2019 DUI arrest. He also concluded that the reference in his 2019 medical records to a past history of alcohol dependence was insufficient evidence to support the allegation in ¶ 2.b. However, Applicant was evaluated by a licensed psychologist in October 2022 and diagnosed with alcohol use disorder, mild. He continued to consume alcohol daily from February 2019 to May 2023, despite a doctor advising him to stop drinking in 2019, and several chronic health issues that were either caused or exacerbated by alcohol. Despite the doctor's recommendation and his legal and health issues, Applicant repeatedly denied having a problem with alcohol. Although he has now abstained from alcohol for over a year because of health concerns, the number of years that he consumed alcohol despite his issues cause doubt whether he has demonstrated a clear and established pattern of modified consumption or abstinence.

With regard to alleged psychological conditions, Applicant was involuntarily hospitalized for two days in 2019 because he either asked a police officer to shoot him in the head or stated that he would shoot himself in the head as he was being arrested for DUI. He was diagnosed with depressive disorder and adjustment disorder.

Applicant was evaluated in 2022 by a Government-requested psychologist who diagnosed him with depressive disorder and an adjustment disorder, along with alcohol use disorder. The psychologist opined that Applicant's continued use of alcohol caused her to have significant concerns regarding his judgment. She did not opine whether Applicant's depressive and adjustment disorders were temporary, but the Judge found that there is evidence that Applicant exhibits several of the symptoms of major depressive disorder. The Judge held that Applicant's

past psychological conditions were not temporary and that there were indications of a current problem, therefore not mitigated.

Discussion

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. The standard applicable in security clearance decisions “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).

In deciding whether the Judge’s rulings or conclusions are erroneous, we will review the Judge’s decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *E.g.*, ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

On appeal, Applicant contends that his past financial debts were not raised in discussions with investigators and that he was granted an interim top secret security clearance. He asserts that his financial issues were resolved at the time of the hearing and that his credit report does not list the SOR debt. Contrary to Applicant’s contentions, the credit-card debt listed in the SOR was discussed during his personal subject interview, he admitted to it in his response to the SOR and indicated that it was unpaid, and the allegation was supported by the Government’s April 2023 credit report.

We concur with the Judge’s finding that the evidence did not support a favorable resolution of the delinquent account, despite its absence from a credit report that Applicant submitted into evidence. A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). [T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution. ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016).

Additionally, the level of clearance currently held or applied for does not affect the Judge’s analysis or the Board’s review. Directive ¶ 3.2 makes no distinction concerning basic clearance levels in its procedures for deciding whether access to classified information is clearly in the national interest. *See* ISCR Case No. 05-11366 at 3 (App. Bd. Jan. 12, 2007). Possession of a previously granted clearance does not give rise to any right or vested interest, nor does any favorable clearance decision preclude the Government from reassessing a person’s security eligibility in light of current circumstances. ISCR Case No. 03-24144 at 6 (App. Bd. Dec. 6, 2005).

Next Applicant contends that the Judge's finding in his favor with respect to the 2019 medical record entry of alcohol dependence shows that he has never been diagnosed with an alcohol-related issue. This assertion ignores the 2022 diagnosis by a psychologist of alcohol use disorder, mild. Applicant also claims he is unaware of the source of such a diagnosis, seemingly oblivious to the 2022 evaluation report contained in Government Exhibit 6, provided to Applicant by Department Counsel and acknowledged at the hearing. Tr. at 20. He also argues that the alcohol dependence diagnosis is inconsistent with his current physical condition and abstinence from alcohol, and he disputes the documents which the psychologist in 2022 used to make a diagnosis. Finally, he argues that his long employment history in a cleared environment and lack of derogatory evaluations offer mitigation and should result in a favorable decision.

We have long held that a disagreement with 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). Concerning the factual assertions made on appeal that are already part of the record, the Directive does not empower the Board to weigh the record evidence *de novo* and make its own findings and conclusions about the case. Rather, the Board addresses the material issues raised by the parties to determine whether the Judge has made factual or legal error. 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).

To the extent that Applicant disagrees with the Judge's weighing of the evidence, none of his arguments are sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Our review of the decision confirms that the Judge considered all aspects of the case and reasonably concluded that the disqualifying conditions to be of such significance that they were not mitigated by Applicant's explanations or evidence.

Applicant has not established that the Judge committed harmful error. 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 in ISCR Case No. 23-00570 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