KEYWORD: Guideline G; Guideline E

DIGEST: In security clearance applications in 2000, 2005 and 2006 Applicant made numerous false statements. The Judge's statement that Applicant is an alcoholic who has abused alcohol for over 35 years is reasonable in light of the record. Adverse decision affirmed.

CASENO: 09-04144.a1

DATE: 07/16/2010

DATE: July 16, 2010

In Re:	)	
	)	
---	)	ISCR Case No. 09-04144
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel

FOR APPLICANT
Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 11, 2009, DOHA issued a statement of reasons (SOR) advising Applicant

of the basis for that decision–security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 3, 2010, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her findings of fact; whether the Judge erred in her application of the mitigating conditions; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a mechanical engineer for a Defense contractor. He has a Master's degree in mechanical engineering. He has worked for his current employer since the late 1970s and has held a security clearance since then.

Applicant has consumed alcohol "to excess and the point of intoxication for over thirty-five years." Decision at 2. During the mid-to-late-2000s he received counseling from a program provided by his employer. In the mid-2000s he also received both in-patient and out-patient treatment, the former resulting in a diagnosis of alcohol dependence.

In August 2006, the police detained Applicant for being drunk in public. Although Applicant was not formally charged with that offense, the incident served as a wake-up call for him. In 2009 he underwent in-patient treatment for alcoholism, followed by out-patient treatment. He began working with Alcoholics Anonymous (AA). He attends three or four meetings a week and has completed the twelve steps.

Applicant has used marijuana, cocaine, and mushrooms in the past, while holding a security clearance. He realized that doing so was illegal and contravened both his employer's and DoD's policies concerning drug abuse. The last time he used marijuana was in 2001.

In security clearance applications (SCA) completed in 2000, 2005, and 2006, Applicant made numerous false statements. He variously denied (1) having used illegal drugs within the previous seven years, (2) having used illegal drugs while holding a security clearance, and (3) having undergone treatment or counseling as a result of his use of alcohol. Applicant also falsely denied drug use in response to DOHA interrogatories sent him in 2009.

Applicant contends that the Judge made an error in her findings of fact. Specifically, he argues that the Judge erred in finding that Applicant had been a heavy drinker at age 14. We have examined the Judge's findings of fact, as well as statements contained in the Analysis portion of the decision. Her finding that Applicant had drunk to excess and to the point of intoxication for over 35 years is derived from an allegation in the SOR which Applicant admitted. Her statement in the Analysis that Applicant is an alcoholic who had abused alcohol for over 35 years is a reasonable inference from Applicant's admissions to the SOR and from the record evidence. The Judge's material findings of security concern are based upon substantial record evidence. *See* Directive ¶

E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.")

In support of his appeal, Applicant has cited other decisions by Hearing Office Judges. We have given these decisions due consideration. However, they have significant factual differences from Applicant's. Each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 08-08012 at 2 (App. Bd. Nov. 20, 2009).

Applicant asserts that the Judge erred in failing to apply Directive, Enclosure 2 ¶ 17(c)[1] to mitigate Applicant's falsifications. The Judge found that Applicant had deliberately given false answers to the Government on nine occasions over a decade, the most recent occurring in 2009. Given those findings, the Judge's failure to apply this mitigating condition is sustainable.

After reviewing the record, we conclude that the Judge examined the relevant data 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)). The Judge's adverse 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

[1]"[T]he offense is so minor, or so much time as passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment."

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board