KEYWORD: Guideline G

DIGEST: The Judge made extensive findings about Applicant's alcohol difficulties and his participation in various treatment programs. Applicant has not rebutted the presumption that the Judge consider all the record evidence. Adverse decision affirmed

CASENO: 09-06190.a1

DATE: 11/08/2010

DATE: November 8, 2010

In Re:	)	
	)	
------	)	ISCR Case No. 09-06190
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Michael J. Harrington, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 17, 2010, DOHA issued a statement of reasons (SOR) advising Applicant

of the basis for that decision–security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 19, 2010, after the hearing, Administrative Judge Rita C. O'Brien 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 failed to consider all of the record evidence and whether the Judge erred in concluding that Applicant had failed to mitigate the security concerns in his case. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a quality control inspector for a Defense contractor. He served in the U.S. National Guard from 1972 to 1978. He held a security clearance while in the National Guard, and he has held one continuously since 2004.

Applicant began drinking alcohol when he was 16 or 17 years old. He drank moderately during college. His first wife died in 1996, after which his drinking increased. In 2000, he had the first of four incidents of driving while under the influence of alcohol. Applicant's car collided with another, and he was later determined to have a blood alcohol level of .24. He pled guilty and was sentenced to "15 days commitment" and three years of unsupervised probation. He attended 16 weeks of alcohol counseling and attended 21 weekly meetings of alcoholics anonymous (AA). After this incident, Applicant abstained from alcohol for approximately 6 months.

Two years later, after having stopped drinking for a few days, Applicant felt ill and went to the emergency room. He was diagnosed with alcohol withdrawal syndrome and alcoholic hepatitis. In 2004, Applicant had his second incident of DUI. He ran a traffic light and hit another car. Pleading guilty, he was fined and sentenced to 90 days confinement, with 85 days suspended. His driver's license was suspended for one year. He was also sentenced to three years probation and was required to have an ignition lock installed on his car. He subsequently attended a state alcohol safety and awareness program (ASAP). For the duration of this course, Applicant abstained from the consumption of alcohol. He also attended AA, but he did not obtain a sponsor.

In January 2009, Applicant had his third DUI. He was sentenced to three months confinement (80 days suspended), one year probation, attendance at a state alcohol education program, driver's license suspension, and installation of an ignition lock on his car. In March 2009, Applicant was arrested while riding his motorcycle under the influence of alcohol. He was convicted and sentenced to 12 months confinement (9 months suspended), three years probation, alcohol education attendance, driver's license suspension, and installation of an ignition lock on his car. At the close of the record he was still on probation, a condition of which was abstention from consuming alcohol.

After this last offense, he enrolled in a three-month residential alcohol treatment program, where he was diagnosed with alcohol dependence. Following this, he enrolled in a one-year outpatient program, completing this course one week before the hearing in his DOHA case. His counselor reported that he had "embraced abstinence" and that his alcohol dependence was in "early

full remission." Decision at 5. Applicant also consulted two psychologists, who concluded that he had a low likelihood of relapse.

Applicant contends that the Judge did not consider all of the record evidence, particularly evidence that he has taken his most recent alcohol treatment programs more seriously than he did the previous ones. Applicant contends that the record demonstrates his commitment to treatment and to sobriety.

A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case 09-01735 at 2 (App. Bd. Aug. 31, 2010). In this case, the Judge made extensive findings concerning Applicant's alcohol difficulties and his participation in various treatment programs. She acknowledged that his recent efforts at rehabilitation appear "more sincere than previously." Decision at 9. However, she also noted evidence that weighed against Applicant, for example that much of his heavy drinking and three of his convictions occurred while he held a security clearance. The Judge stated that Applicant's recent sobriety, though promising, is not sufficient to mitigate security concerns arising from a significant history of alcohol abuse and dependence. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

The record supports a conclusion 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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge

Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board