

KEYWORD: Guideline J; Guideline H; Guideline E

DIGEST: There is a rebuttable presumption that a Judge is impartial and unbiased.. The issue is not whether a party personally believes the Judge was biased or unfair, but whether the record contains any indication that the Judge acted in a manner that would lead a reasonable person to question the Judge’s impartiality. Applicant has failed to meet his heavy burden of persuasion on this issue. Adverse decision affirmed.

CASENO: 07-00062.a1

DATE: 12/05/2008

DATE: December 5, 2008

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In Re:	)	
-----	)	ISCR Case No. 07-00062
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 19, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 19, 2008, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge was biased.

Applicant argues that Judge was biased, essentially based upon the fact that the Judge did not find Applicant’s favorable evidence sufficient to mitigate the government’s security concerns. The Board does not find this argument persuasive.

There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to rebut that presumption has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). The issue is not whether Applicant personally believes the Judge was biased or unfair, but whether the record contains any indication the Judge acted in a manner that would lead a reasonable person to question the fairness and impartiality of the Judge. *See, e.g.*, ISCR Case No. 06-09462 at 2 (App. Bd. Jul. 19, 2007). Lack of partiality is not demonstrated merely because the Judge made adverse findings or reached unfavorable conclusions. *Id.* Moreover, even if an appealing party demonstrates error by the Judge, proof of such error, standing alone, does not demonstrate the Judge was biased or prejudiced. *See, e.g.*, ISCR Case No. 04-03834 at 2 (App. Bd. Jul. 2, 2007).

Applicant has not met the heavy burden of persuasion noted above, in that he fails to identify anything in the record below that indicates or suggests a basis for a reasonable person to question the fairness, impartiality, or professionalism of the Judge. *See, e.g.*, ISCR Case No. 03-00740 at 2 (App. Bd. Jun. 6, 2006).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She found in favor of Applicant under Guideline H and with respect to several of the factual allegations under Guidelines J and E. However, she reasonably explained why the evidence which Applicant had presented in mitigation was insufficient to overcome the government’s security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). The Judge examined the relevant data and articulated a satisfactory explanation for her 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 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). Accordingly, the Judge’s adverse decision is sustainable.

**Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board