

KEYWORD: Guideline G; Guideline E

DIGEST: 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 record. Adverse decision affirmed.

CASENO: 07-02122.a1

DATE: 05/09/2008

DATE: May 9, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-02122
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Robert A. Skipworth, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 15, 2007, DOHA issued a statement of reasons 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 January 18, 2008, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge’s adverse security clearance decision was made without an adequate evidentiary basis and without consideration of contrary record evidence; and whether the Judge’s whole-person analysis is sustainable. Finding no harmful error, we affirm.

The Judge made the following sustainable findings of fact: Applicant was arrested in 1976 for DUI and for driving too fast for conditions, causing injuries. He was convicted of both offenses and sentenced to one year probation and to a fine of \$250. He was arrested in 1981 and charged with assault upon a military policeman, resisting apprehension, and domestic disturbance. This incident occurred on a military base while Applicant was serving in the armed forces. He was reprimanded by his commander. The Judge concluded that the evidence as a whole did not support a finding that this was an alcohol-related incident, despite references to alcohol in the police report.

In February 1989 Applicant was arrested and charged with DUI. He was convicted of that charge in absentia, having failed to appear in court. In May 1993 Applicant was again arrested for DUI, as well as for speeding, improper lane usage, and a safety belt violation. He was convicted of reckless driving and sentenced to 12 months probation and a fine of \$1,150. In May 2002 Applicant was stopped by police for erratic driving and charged with DUI. He was sentenced to 14 months probation and a \$500 fine. Additionally he was instructed by the court to attend counseling.

Question 23 of Applicant’s security clearance application (SCA), completed in February 2006, asked him to list any alcohol or drug related charges or convictions. Applicant mentioned the May 2002 incident but did not disclose the charges arising in 1976, 1989, and 1993.

In April 1992 Applicant submitted a SCA during a prior security clearance investigation. Question 21 asked for the disclosure of all previous arrests, whether alcohol-related or not. Applicant listed his 1989 DUI, but he did not mention the arrests in 1976 and 1981. Although Applicant stated that he had misunderstood the scope of the questions, the Judge found that both questions are “straight forward,” without any time limitations, and could not plausibly be so misread on two separate occasions. In his analysis section of the decision, the Judge stated that Applicant’s denial of an intent to deceive was not credible.

The Board has examined Applicant’s assignments of error in light of the record as a whole. We conclude that the Judge’s material findings of security concern are supported by 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 record.”) To the extent that the Judge’s findings contain errors, the Board concludes that they are harmless in that they would not reasonably have affected the outcome of the case. *See*

ISCR Case No. 06-07247 at 2 (App. Bd. Feb. 13, 2008). Furthermore, we conclude that the Judge has drawn a “rational connection between the facts found” and his adverse clearance decision, both as regards to his application of the relevant mitigating factors as well as to his whole person analysis. *See 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 Board has considered the briefs of the parties, the Judge’s decision, and the record as a whole. The record supports the Judge’s conclusion that “it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance.” *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”) The Judge’s adverse security clearance decision is sustainable.

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple
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