

Applicant raised the following issues on appeal: whether the Judge's findings are based on substantial evidence; and whether the Judge's adverse clearance decision under Guideline G is sustainable.

The Judge made the following relevant findings: Applicant is a 37-year-old employee of a defense contractor. He graduated from high school in 1989 and attended college for several years. Applicant is divorced with two children. He served in the U.S. Navy from 1993 until 1997, and has held a security clearance from 1997 until the present.

Applicant started drinking alcohol while in high school, drinking beer on the weekends. He continued his drinking while in the Navy, on weekends and during shore leave.

In 1996, Applicant received a Captain's Mast under Article 15 of the Uniform Code of Military Justice (UCMJ) for fighting and drunkenness after returning from shore leave. He received a restriction for 30 days. Applicant claimed he did not realize that the 12-ounce can that held his drink was straight vodka. In 1997, Applicant received a Captain's Mast for the offense of drunkenness, suspended for six months, and restriction for 30 days.

In 1998, Applicant completed a sworn statement expressing remorse for his drinking and the trouble that it caused him. He stated that he was mature and learned not to abuse alcohol. However, he continued to consume alcohol.

In 1999, Applicant self referred to a 13-week program (outpatient) and attended Alcoholics Anonymous (AA) twice a week. He was drinking three or four mixed drinks each weekend evening. If he was stressed, he drank two drinks on a weekday evening. His diagnosis by his therapist was alcohol abuse. After completion of the program, Applicant abstained from alcohol for approximately nine months.

In the early years of his marriage, Applicant drank hard liquor frequently. He would have a shot of whiskey. He became belligerent when he drank according to his own assessment.

In 2004, Applicant was arrested for Driving Under the Influence (DUI) and failure to take a breath test. He had consumed six to eight beers prior to the incident. Applicant pled guilty to the charge of DUI and was sentenced to 30 days in jail and a one year restricted driver's license. He was ordered to attend the driver safety program for counseling and to pay court costs and fines of \$550. Applicant completed the alcohol classes in 2006.

In 2005, Applicant's court ordered therapist recommended continued abstinence and involvement with AA. He was diagnosed as alcohol dependent with a good prognosis. Applicant still consumes alcohol, is confident that he has control over alcohol, and does not consider himself to be alcohol dependent.

Applicant's manager at work testified to his long time association with Applicant, and to his good character and professionalism at work, and to his generosity and ability to help others. He recommends Applicant for a security clearance.

Applicant argues that the Judge’s adverse clearance decision should be reversed because the Judge erred in finding that the incidents leading to Applicant’s Captain’s Masts in 1996 and 1997 were alcohol-related.¹ He also argues that the Judge’s adverse decision is not supported by the record as a whole.² The Board does not find these arguments persuasive.

The Board’s review of a Judge’s findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620, (1966).

After reviewing the record, the Board concludes that the Judge’s findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-17691 at 3 (App. Bd. Jul. 19, 2007). An applicant’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, 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 mitigating conditions and whole-person factors. She found in favor of Applicant as to one of the SOR factual allegations.³ 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). After reviewing the record,

¹Applicant admitted to both of these allegations in his answer to the SOR.

²As part of his brief, Applicant’s Personal Representative offers new evidence in the form of his personal observations as to Applicant’s character, loyalty, and excellent job performance. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

³SOR paragraph 1(f).

the Board concludes that 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 ultimate adverse decision under Guideline G is sustainable.

Order

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

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairman, 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