

KEYWORD: Guideline G; Guideline E

DIGEST: The Judge made sustainable findings that Applicant had consumed alcohol at times to excess and to the point of intoxication from approximately 1975 to at least may 2010 and had been arrested and prosecuted on multiple occasions for DWI. The Judge reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. Adverse decision affirmed.

CASENO: 10-07310.a1

DATE: 03/30/2012

DATE: March 30, 2012

In Re:	)	
	)	
-----	)	ISCR Case No. 10-07310
	)	
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 May 25, 2011, 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 December 30, 2011, after the hearing, Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious or contrary to law.

Applicant seeks reversal of the Judge’s adverse decision arguing essentially that the evidence demonstrates that Applicant has mitigated the government’s security concerns. In support of his argument, he presents a detailed summary of the evidence presented at the hearing—emphasizing what he has learned from his experience, and the fact that he attended counseling and received a favorable assessment. He also submits a statement about changes in his situation subsequent to the hearing, which the Board cannot consider on appeal. *See* Directive ¶ E3.1.29. Applicant’s presentation does not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

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*. A party’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. 10-04042 at 2 (App. Bd. Oct. 4, 2011).

In this case, the Judge made sustainable findings that Applicant had consumed alcohol at times in excess and to the point of intoxication from approximately 1975 to at least May 2010, and had been arrested and prosecuted on multiple occasions for Driving Under the Influence between 1983 and 2005. In the 2005 incident, which resulted in two felony charges, Applicant had been driving with a Blood Alcohol Content of more than twice the legal limit and had hit a stopped motorcycle. In an incident in 2009, Applicant had become intoxicated and disruptive on an airplane and had to be escorted off the plane by airport police. Decision at 2-5, and 7. The Judge also made sustainable findings that Applicant had deliberately omitted information of security significance from his security clearance application. *Id.* at 5 and 9. These incidents were sufficient to establish the government’s security concerns under Guidelines G and E, and to shift the burden of mitigation to Applicant.

A review of the decision indicates that the Judge weighed the mitigating evidence offered by Applicant, including his participation in counseling and his favorable work performance, against the length and seriousness of the disqualifying conduct, and considered the possible application of relevant conditions and factors. *Id.* at 7-10. The Judge reasonably explained why the mitigating

evidence was insufficient to overcome the government’s security concerns—noting in particular that Applicant had resumed drinking after completion of alcohol treatment in 1999, had provided no current favorable prognosis by a qualified medical professional, including the counselor he saw for four sessions in 2011, and that Applicant’s August 2011 assessment of “Insufficient Evidence of Abuse/Dependence” was based on his self-report of only about half of his history of alcohol-related incidents. *Id.* at 8.

The Board does not review a case *de novo*. After reviewing the record, the Board concludes 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 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). Therefore, the Judge’s unfavorable security clearance decision 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  
Chairperson, Appeal Board

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

Signed: Willaim S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board