KEYWORD: Guideline G; Guideline H

DIGEST: Regarding Applicant's request for the granting of a conditional clearance, he asked for relief that the Judge had no authority under the Directive to grant. Applicant's representations regarding his intent to engage in future desirable conduct, such as abstinence, have limited probative value and do not mandate a favorable overall decision in the context of this case. Adverse decision affirmed.

CASE NO: 10-11132.a1

DATE: 08/02/2012

DATE: August 2, 2012

In Re:	)	
----------	)	ISCR Case No. 10-11132
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 September 16, 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 H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On June 14, 2012, after the hearing, Administrative Judge Robert J. Tuider denied Applicant's request for a security clearance. Applicant timely appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's conclusions under Guideline E were arbitrary, capricious, or contrary to law.[1] For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings of fact: Applicant is 32 years old. He had been an intermittent heavy drinker before age 21, for a period of about 6 months when he was age 24, and between November 2009 and January 2010. During the latter period he drank approximately a half gallon of saki or rum per week. The November 2009 to January 2010 period of consumption involved Applicant blacking out at least four times. Applicant continued to consume alcohol after he left the Army in May 2010. He had received alcohol consumption counseling from the Army, but did not attend AA meetings. He did abstain from alcohol use during an overseas tour as a defense contractor from October 2011 to May 2012. After returning, he drank a beer or two a few nights before his security clearance hearing. Applicant's alcohol consumption has caused a lot of conflict with his spouse at home. Applicant's spouse does not believe Applicant had a problem with excessive alcohol consumption. She indicated that Applicant drank a flask of alcohol three or four times a day, and he had lots of blackouts. He would pass out, wake up, and have no memory. Applicant currently limits his alcohol consumption to two drinks. He has not gone to AA meetings because he feels he doesn't need it. Applicant does not have a diagnosis of alcohol abuse or dependence.

The Judge reached the following conclusions: Applicant habitually consumed and engaged in binge-alcohol consumption to the extent of impaired judgment. His excessive alcohol consumption and passing out in various locations in his home resulted in some conflict with his spouse. Although he completed an alcohol abuse counseling program in 2010, he did not attend AA meetings and he does not currently attend any other alcohol treatment or counseling program. He does not fully recognize that his alcohol problem raises security concerns. Applicant's multiple instances of binge consumption of alcohol in 2009, his continued alcohol consumption in May 2012, his denial of an alcohol problem, the absence of a credible evaluation or diagnosis of his alcohol consumption, the absence of a credible prognosis relating to his alcohol consumption of a medical or psychiatric authority, and the absence of any ongoing counseling or therapy cause lingering doubts about Applicant's alcohol consumption security concerns. Applicant did not disclose that he received alcohol and drug treatment on his August 17, 2010 SF-86. His dishonesty on his SF-86 adversely affects his credibility and is an indication he is not rehabilitated. His problems with alcohol cannot be fully mitigated at this time.

Applicant asserts that the Judge "did not fully consider the commitment I made in my final pleadings in the case. These pleadings are contained in my letter of May 21, 2012; a copy of which

[1]The Judge made formal findings favorable to Applicant under Guideline H. Those findings are not at issue on appeal.

is attached." The May 21, 2012 letter was included in the record below as Applicant's Exhibit G. In it, Applicant essentially states that he is committed to continued support of our troops in his current role as a civilian contractor. He states that he has adopted a personal commitment to totally forgo all alcohol consumption, and to begin attendance at AA meetings on a regular basis. Applicant stated to the Judge in the letter, "if you should choose to issue a continuance of my security clearance, conditioned on attendance of AA meetings and/or additional counseling; I will welcome the ruling and strictly abide by all conditions imposed."

Regarding Applicant's request for the granting of a conditional clearance, he asked for relief that the Judge had no authority under the Directive to grant. *See, e.g.*, ISCR Case No. 08-07904 at 3 (App. Bd. Mar. 3, 2010). Thus, not granting a conditional clearance cannot constitute error.

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. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

The Judge offered a lengthy explanation as to why the disqualifying conduct was not mitigated. The Board concludes that the Judge appropriately weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct. The representations in the May 21, 2012 letter constitute favorable evidence that the Judge was required to consider, but the Board notes that those representations are essentially promises to engage in future desirable conduct that Applicant has not engaged in heretofore. The probative value of such representations in terms of mitigation is limited. *See, e.g.*, ISCR Case No. 05-16046 at 4 (App. Bd. Sep. 18, 2007). They do not mandate a favorable overall decision in the context of this case.

The Board does not review a case *de novo*. The favorable 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, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 ultimate 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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