

KEYWORD: Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. The Board cannot consider new evidence on appeal. The effect of an adverse decision is not relevant or material to a clearance adjudication. A clearance decision is not punitive in nature. Adverse decision affirmed.

CASE NO: 13-00546.a1

DATE: 12/02/2013

DATE: December 2, 2013

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In Re:)	
)	
-----)	ISCR Case No. 13-00546
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 5, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 17, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law.¹ Consistent with the following, we affirm the Judge's decision.

The Judge's Findings of Fact

Applicant has worked in his current job since February 2013 and in his field since 2004. He enjoys an excellent reputation for the quality of his work performance and reliability.

Most of the Judge's findings pertained to allegations that he ultimately resolved in Applicant's favor. Regarding the one allegation that he decided against Applicant, the Judge found that, in December 2012, Applicant attended a holiday party where he consumed five to seven beers. While driving home, he rear-ended a car in front of him at an intersection. The responding police officer administered a breathalyzer to Applicant, which showed that Applicant was under the influence of alcohol. Convicted of DUI, he appealed and ultimately was found guilty of the lesser charge of reckless driving. He was sentenced to 30 days in jail, suspended; an \$800 fine; and mandatory attendance at an alcohol awareness class. The court placed Applicant upon supervised probation for a year, with a driving restriction and an interlock breathalyzer system in his car. As of the close of the record, Applicant was still on probation.

The Judge's Analysis

The Judge concluded that Applicant's DUI incident raised security concerns under Guideline E. In finding that Applicant had failed to mitigate those concerns, the Judge cited to the recency of the incident and his continued probation. In the whole-person analysis, the Judge noted evidence that was favorable to Applicant, such as his having overcome a troubled childhood. He stated that he found Applicant to be genuinely contrite over his security-significant conduct. Nevertheless, he concluded that the evidence was not sufficient to outweigh the recency and seriousness of Applicant's DUI.

Discussion

Applicant cites to evidence that he has held a clearance for five years without incident or concern, that he has complied with all of the requirements imposed on him by the court, and that he has abstained from alcohol. This was evidence the Judge was required to consider, along with all the other evidence in the record. However, Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-12875 at 2 (App. Bd. Sep. 17, 2013). Evidence of the recency of the offense and Applicant's probationary status support the Judge's treatment of the mitigating conditions.

¹The Judge's favorable findings under SOR subparagraphs 1.a through 1.g are not at issue in this appeal.

Applicant's brief cites to evidence not contained in the record, that we cannot consider. *See* Directive ¶ E3.1.29. *See also* ISCR Case No. 11-05684 at 2 (App. Bd. Sep. 24, 2013). Applicant states that he has experienced a cut in pay since the loss of his clearance, and he asserts that he has been punished enough for his offense. The effect of an adverse decision upon an applicant is neither relevant nor material in accessing his or her security eligibility. *See, e.g.,* ISCR Case No. 11-02441 at 3 (App. Bd. Feb. 15, 2013). Moreover, a clearance decision is an inquiry into such conduct or circumstances as raise questions about an applicant's judgement, reliability, and ability or willingness to protect classified information. It is not punitive in nature. *See, e.g.,* ISCR Case No. 03-24233 at 8 (App. Bd. Oct. 12, 2005).

After examining the decision in light of the record as a whole, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board