

KEYWORD: Guideline G; Guideline E

DIGEST: The Judge's material findings of security concern were based on substantial record evidence and were sustainable. Adverse decision affirmed.

CASENO: 07-01273.a1

DATE: 10/16/2008

DATE: October 16, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 07-01273
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**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 October 9, 2007, 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 June 30, 2008, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse findings under SOR paragraph 1.f are supported by the record evidence<sup>1</sup>; whether the Judge’s adverse conclusions under Guideline E are supported by the record evidence.

The Judge found that Applicant “consumed alcohol excessively . . . between 1975 and August 2005, and often to the point of intoxication.” Decision at 3. Applicant was arrested for DUI twice in 1978, once in 2003 and once in 2005 (the latter being the challenged finding on appeal). Applicant’s drinking included periods where he would drink for days at a time and suffer blackouts. Applicant was treated for substance abuse in 2002 but continued to drink sometimes a 1.75 liter bottle in one sitting. With respect to the 2005 DUI, Applicant was convicted, fined and had his driver’s licence revoked. He was put on probation conditioned upon his participation in an intensive outpatient program, which he completed in 2005. Applicant attended after-care through most of 2006. He continues to attend AA. Three witnesses credit Applicant with two-and-a-half years sustained abstinence.

After reviewing the record, the Board concludes that the Judge’s material findings of security concern under Guideline G are based upon substantial record evidence and are sustainable. *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 same record.”) The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conditions and considered the possible application of relevant mitigating conditions. He reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. Accordingly, the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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 Judge’s decision that “it is not clearly consistent with national security to grant or continue Applicant’s security clearance” is sustainable on this record. Decision at 11. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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<sup>1</sup>Applicant’s appeal brief makes no reference to the Judge’s other adverse findings under SOR paragraph 1, specifically 1.a., 1.b., 1.c., 1.d., and 1.e.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairman, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board