

KEYWORD: Guideline G; Guideline E; Guideline J

DIGEST: Applicant has two DUI arrests and convictions from incidents in 2005 and 2006. He was diagnosed and treated for alcohol dependence but did not complete follow-up care. He used marijuana and cocaine from 2001 to 2005 while holding a security clearance. He falsified a security clearance application. Adverse decision affirmed.

CASENO: 07-01499.a1

DATE: 07/03/2008

DATE: July 3, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-01499
)	
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 June 13, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On March 31, 2008, after considering the record, Administrative Judge Shari Dam 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 failure to mitigate the Guideline G, E and J security concerns under the mitigating factors and the whole person concept is arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge found Applicant had consumed alcohol, at times in excess and to the point of intoxication, from approximately 1996 to at least 2006. In October 2005, he was charged with Driving Under the Influence (DUI). His Blood Alcohol Content (BAC) at the time of the offense was 0.163%. He pleaded guilty to the charge and was sentenced to 30 days suspension of his driver’s license, 12 months probation, court ordered attendance at alcohol safety awareness classes, and 25 hours community service. In May 2006, Applicant was again charged with DUI, this time with a BAC of 0.21%. He pleaded guilty to the charge and was sentenced to 30 months suspension of his driver’s license, a \$3,000 fine, two days in jail, 90 days of house arrest with electronic monitoring, and 50 hours community service. Applicant was on probation for the offense until November 2007. He received treatment for a condition diagnosed as Alcohol Dependence in the summer of 2006, but did not complete recommended follow-up care.

The Judge also found that Applicant had used marijuana and cocaine from 2001 to at least 2005, while holding a security clearance, and that he had falsified his Security Clearance Application by failing to disclose that use.

The Board has examined the Judge’s decision in light of the record as a whole and concludes that she has drawn ‘a rational connection between the facts found’ under Guidelines G, E and J and her adverse decision. *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)). She specifically considered the whole person concept in reaching her decision. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests

¹As part of his brief, Applicant submits new evidence in the form of additional explanations and two documentary exhibits. The Board cannot consider this new evidence on appeal. See Directive ¶ E3.1.29.

of the national security.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Judge’s adverse decision is not arbitrary, capricious, or contrary to law.

Order

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

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