

KEYWORD: Guideline G; Guideline B

DIGEST: Th Judge' sustainable findings of fact support his adverse decision under Guideline G. Adverse decision affirmed.

CASENO: 07-05179.a1

DATE: 04/10/2008

DATE: April 10, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 07-05179
---	---------------------------------	------------------------

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James G. Beach, III, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 2, 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 B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 20, 2007, after the hearing, Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings were supported by substantial record evidence; whether the Judge erred in his application of the pertinent mitigating conditions; and whether the Judge’s whole-person analysis is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings: Applicant has three alcohol-related incidents in his record. In 1965 he was convicted of DUI and sentenced to pay a fine. In 2000 he was arrested and charged with DUI. He received “probation before judgment” and was placed under a year of supervised probation. Additionally he completed a 12-week alcohol education program. He was abstinent for two years and then resumed consuming alcohol, mostly wine. In August 2006 he was again convicted of DUI. “He explained that after leaving work, he stopped for dinner at a restaurant [on] his way home and had a couple of glasses of wine . . . On his way home, he felt tired and parked his car in the parking lot of [a] convenience store. A police officer found him asleep behind the wheel of his car with the engine running. A subsequent test determined his blood alcohol content to be .13.” Decision at 3. He was convicted of DUI, served 10 days in jail, and was still undergoing a period of unsupervised probation at the time of his hearing. He testified that he has an alcohol problem and has changed his lifestyle to correct it.

In deciding against Applicant under Guideline G, the Judge took into account Applicant’s remorse over his alcohol misconduct and his changes in behavior. However, the Judge stated that it is “premature to evaluate his ability to adhere to his stated sobriety plan, or to gauge his potential for success. In 1965 and 2000, Applicant engaged in serious criminal behavior by driving under the influence of alcohol. His 2006 relapse shows he has not learned from his mistakes . . .” Decision at 7. As a consequence, the Judge concluded that Applicant had not met his burden of persuasion that it is “clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant.” *Id.* at 11. The record supports the Judge’s decision, both as to the weight accorded to the evidence under the Guideline G mitigating conditions as well as the whole-person analysis. Applicant’s ability to argue for a different interpretation of the record evidence does not establish error on the part of the Judge. *See, e.g.*, ISCR Case No. 07-03120 at 2 (App. Bd. Jan. 30, 2008). Accordingly, the Judge’s decision under Guideline G is not arbitrary, capricious, or contrary to law. In light of this holding the Board need not address the Guideline B security concerns.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
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