

KEYWORD: Guideline H; Guideline G

DIGEST: The Judge’s material findings of security concern are supported by substantial evidence. Adverse decision affirmed.

CASENO: 08-01200.a1

DATE: 11/13/2008

DATE: November 13, 2008

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 08-01200
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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 March 24, 2008, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline G

(Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 29, 2008, after considering the record, Administrative Judge Joseph Testan 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 of fact were supported by substantial record evidence, and whether the Judge erred in his evaluation of the Guideline G mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant began consuming alcohol in college in the 1990s, drinking once or twice a week and becoming intoxicated once or twice a month. Following college, his alcohol consumption increased. By July 2006 he was consuming six alcoholic beverages a day. This continued until March 20, 2007, when he drank to the point of semi-consciousness. He consulted a psychiatrist, who diagnosed him with "alcoholism" and prescribed a drug. Applicant no longer takes the drug, as he states he has stopped craving alcohol. In 2003, Applicant was arrested for driving under the influence of alcohol. He was fined \$375.00 and his license was suspended for six months. Applicant attends Alcoholics Anonymous meetings regularly.

In the Analysis portion of his decision, the Judge stated that he had considered the disqualifying and mitigating conditions in light of the entire record. He noted that, following college graduation, Applicant "increased the frequency of his excessive alcohol consumption to the point that by July 2006, he was consuming six alcoholic beverages on a daily basis. This daily abuse occurred long after his serious alcohol-related driving incident in 2003 . . . These facts, together with his diagnosis of 'alcoholism,' suggest that [A]pplicant's alcohol problem is severe, and will require a significant period of abstinence—much longer than the approximately 15 months of abstinence he has to date—to safely conclude his abuse of alcohol . . . is unlikely to recur." Decision at 5.

We have examined the Judge's decision in light of the record as a whole. The Judge's material findings of security concern are supported by substantial record evidence. *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.") Applicant contends that the Judge did not assign sufficient weight to Applicant's favorable evidence, such as "changes in behavior supportive of sobriety" and his stated intention never to use alcohol again. However, a Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e. g.*, ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). "An applicant'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* ISCR Case No. 07-10454 at 2 (App. Bd. Aug. 12, 2008). Furthermore, Applicant chose to have the case decided upon the written record, with the result that his credibility could not be evaluated in the context of a hearing. *See* ISCR Case No. 08-00899 at 3 (App. Bd. Jul. 29, 2008).

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 [A]pplicant eligibility for a security clearance" is sustainable on this record. Decision at 5. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael D. Hipple
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