

KEYWORD: Guideline F; Guideline G; Guideline J

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. A prior good security record does not preclude an adverse decision. Adverse decision affirmed.

CASE NO: 09-06775.a1

DATE: 08/30/2011

DATE: August 30, 2011

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In Re:)	
)	
-----)	ISCR Case No. 09-06775
)	
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 September 21, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 9, 2011, after the hearing, Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge failed to consider all of the record evidence; whether the Judge erred in his application of the pertinent mitigating conditions; and whether the Judge’s whole-person analysis was erroneous. Consistent with the

following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a former employee of a Defense contractor. He hopes to be hired by the same company if he is granted a security clearance. He held a security clearance from 1981 to 2006. He has a B.S. in electrical engineering. He has a ten-year-old child from a previous marriage.

Applicant was steadily employed by a Defense contractor from December 1999 to October 2004. He had no financial problems until he divorced in 2002. The court ordered him to pay child support, as a consequence of which it became harder to pay other expenses. He began using credit cards to pay for living expenses "due to spending beyond his means." Decision at 3.

In October 2004 he was fired due to a "verbal altercation" with his supervisor. *Id.* During his ensuing period of unemployment, he fell behind on child support payments. In January 2006, a contractor hired him into an engineering position, with an annual salary of \$75,000. He was fired the following July due to a conviction for DUI. He was unemployed again for about nine months. A power company hired him for an engineering position but did not offer him a permanent job. The company fired him due to personality conflicts with his supervisor. He was unemployed until September 2010, when he began his current job as a customer service representative for a credit card company.

In June 2006, Applicant discharged about \$80,000 in unsecured debt through Chapter 7 bankruptcy. He has other delinquent debts, for medical services and child support. He has petitioned a court to reduce his child support payments, which were fixed at a time when he had a substantially higher salary. He also has delinquent state and federal income taxes.

In addition to his financial delinquencies, Applicant has experienced problems with alcohol. He was arrested for DUI in 1976, 1977, 2004, twice in 2005, and 2008. These arrests had different legal outcomes. He attended outpatient alcohol treatment from May to June 2004, but he resumed drinking despite an abstinence requirement of his probation. After his final incident, he entered a month-long inpatient treatment program, followed by a court-ordered outpatient program. "His certified counselor from that outpatient program confirmed Applicant's diagnosis of Alcohol Dependence in Sustained Full Remission, and Opioid Dependence in Sustained Full Remission." Decision at 4.

Applicant has committed criminal offenses in addition to the alcohol infractions listed above. These include disturbing the peace; using a telephone to annoy, harass, or offend; trespassing, petit theft and battery; and another incident of trespassing. In July 2009, Applicant was arrested in a neighboring state and charged with Driving Under the Influence/Drugs. A breathalyzer test detected no alcohol in Applicant's system. However, he had recently changed his anti-depressant medication, and he should not have been driving. He pled guilty to negligent driving. As a consequence of this arrest, his home state charged him with a probation violation.

Applicant has successfully completed a court-ordered alcohol and drug treatment program and a DUI program. His 2008 DUI charge was reduced from a felony to DUI-second offense, with two years probation. His probation officer intends to recommend him for release from probation

in September 2011.

Family, friends, and co-workers hold high opinions of Applicant's work performance, integrity, trustworthiness, and compliance with security procedures.

In his Analysis, the Judge stated, "Applicant currently has over \$31,000 in delinquent debts that he accrued since he discharged about \$80,000 in other debts through bankruptcy . . . and [he] did not demonstrate the financial means to resolve those debts or avoid new ones. His alcohol abuse and criminal conduct arose from choices that he voluntarily made, and his commendable efforts to address them are too recent to establish a permanent behavioral change." Decision at 12.

Applicant contends that the Judge did not consider, or mis-weighed, evidence favorable to him, such as his good financial record prior to his divorce, his attendance at AA and other efforts he has undertaken to maintain sobriety, and the absence of recent criminal activity. He also points out that he held a security clearance for many years without incident or concern. On this last point, a good prior security record does not preclude an adverse clearance decision. *See, e.g.*, ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009). In the case under consideration here, some of Applicant's security significant conduct arose after he had last held a clearance. Moreover, the Judge discussed much of the other evidence which Applicant has cited. However, his decision provides a reasonable explanation for his denial of a clearance. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Neither has he demonstrated that the Judge mis-weighed the evidence.

Applicant takes issue with a comment by the Judge that the record contained no favorable prognosis concerning the likelihood of Applicant's return to alcohol abuse. Applicant contends that no doctor can predict with certainty whether or not a given alcoholic will resume drinking. However, the Judge's comment was contained in his analysis of the Guideline G mitigating conditions, one of which addresses completion of a counseling and rehabilitation program along with a favorable prognosis by a medical professional or social worker.¹ Insofar as the challenged sentence merely tracks the language of the Directive, it is without error as a matter of law.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made'" both as to the mitigating conditions and the whole-person factors. *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 adverse 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."

¹Directive, Enclosure 2 ¶ 23(d).

Order

The Judge's adverse security clearance 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