

KEYWORD: Guideline G; Guideline H; Guideline E

DIGEST: Applicant’s evidence of modified drinking habits and abstinence from the use of illegal drugs was not sufficient to mitigate security concerns arising from, among other things, several instances of DUI and his discharge from the Navy for cocaine use. Adverse decision affirmed.

CASE NO: 09-07084

DATE: 06/22/2011

DATE: June 22, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-07084
)	
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 13, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption). The SOR was later amended to add allegations under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 7, 2011, after the hearing, Administrative Judge Michael H. Leonard denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse security

clearance decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Federal contractor. He is an electronics technician at a Naval shipyard. Divorced and remarried, he has a son from his previous marriage. He served in the U.S. Navy from 2000 to 2006, at which time he was discharged for drug abuse.

Applicant has a history of heavy drinking, dating back to 1999. This history includes several incidents of alcohol-related misconduct. In 1999, he was arrested and charged with DUI. Involved in a single-car accident, he paid a fine and was required to attend a DUI camp, an education program.

His second alcohol-related incident occurred in 2000, when he was again arrested and charged with DUI. The charge was dismissed based on his enlistment in the Navy and completion of boot camp.

In 2005 he was again arrested and charged with DUI. He refused to submit to a blood-alcohol test. He pled guilty to a lesser offense and was sentenced to a fine and to a suspended 30-day jail term.

In 2007 Applicant was charged with public intoxication, resulting in a small fine. A year later he was charged with DUI and pled guilty to reckless driving. This last incident was a "wake-up call" for him. He no longer drinks and drives. If he and his wife go out for dinner, he uses a designated driver or taxi.

In addition to his alcohol-related misconduct, Applicant used cocaine on about three occasions in 2006, while on active duty with the Navy. He did so while dating a woman who used the drug. Applicant's cocaine use was discovered through a routine urinalysis. As a consequence of his positive urinalysis, Applicant received non-judicial punishment and an administrative discharge from the Navy under other than honorable conditions (UOTHC). A UOTHC "is the most severe type of administrative discharge, and it carries a certain stigma." Decision at 4.

In the Analysis portion of the Decision, the Judge noted Applicant's modified drinking habits and his abstinence from illegal drugs. However, he concluded that Applicant's pattern of alcohol-related offenses and his drug abuse, viewed cumulatively, raised questions about his security worthiness which the favorable evidence in the record was not sufficient to mitigate. Accordingly, the Judge concluded that Applicant had failed to meet his burden of persuasion.

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.'" *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.”

Order

The Judge’s adverse security clearance decision 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