

KEYWORD: Guideline G

DIGEST: Hearing Office decisions are not binding precedent. Applicant failed to mitigate security concerns arising from 17 years of excessive alcohol consumption, 3 arrests, and diagnosis of alcohol dependence. Adverse decision affirmed.

CASE NO: 09-08248.a1

DATE: 08/22/2011

DATE: August 22, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-08248
)	
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 October 18, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 6, 2011, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious, or contrary to law.

Applicant seeks reversal of the Judge's adverse decision arguing that the evidence demonstrates that Applicant has mitigated the security concerns raised by his excessive use of alcohol. In support of his argument, he presents a detailed summary of the evidence presented at the hearing and cites to several Hearing Office cases in which applicants with ostensibly similar circumstances received a clearance. Applicant's presentation does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

In his brief, Applicant acknowledged that during his research he found that "not a great deal of cases like [his] are granted clearances" and the cases he cited have significant differences from his own. Although Hearing Office decisions may be cited as persuasive authority, they are not binding legal precedent which must follow in another situation. Applicant's reliance on other Hearing Office decisions does not demonstrate that the Judge erred in this case. *See, e.g.*, ISCR Case No. 09-03448 at 2 (App. Bd. May 19, 2011). "The adjudicative process is the careful weighing of a number of variables known as the whole-person concept." Directive, Enclosure 2 ¶ 2 (a). "Each case must be judged on its own merits . . ." *Id.* at ¶ 2 (b).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party'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, e.g.*, ISCR Case No. 10-00278 at 2 (App. Bd. Mar. 18, 2011).

In this case, the Judge found that Applicant, a 32-year-old engineering technician, had consumed alcohol, at times in excess and to the point of intoxication, from approximately age 14 to at least March of 2010—a span of approximately 17 years. He had been arrested for alcohol-related driving incidents in 1997, 1999, and 2000, and had been evaluated and diagnosed for Alcohol Dependence in about July 2010. Decision at 2, 3, and 6. At the time the case was submitted for decision, Applicant had "only recently acknowledged his alcohol problem, and [had] only about a year of sobriety." *Id.* at 7. The Judge weighed the mitigating evidence offered by Applicant—including his efforts at rehabilitation, his favorable work performance and letters of recommendation, and numerous awards and commendations in the Navy—against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. *Id.* at 3-7. She reasonably explained why the mitigating evidence was insufficient to overcome all of the government's security concerns. *Id.*

The Board does not review a case *de novo*. After reviewing the record, the Board concludes 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 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). Therefore, the Judge's

unfavorable security clearance decision is sustainable.

Order

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board