

KEYWORD: Guideline F; Guideline G; Guideline J

DIGEST: Judge entered favorable findings under Guideline F. However, evidence of repeated criminal conduct involving alcohol, to include an incident involving serious acts of violence, supports the Judge’s adverse findings under Guidelines G and J. Adverse decision affirmed.

CASE NO: 10-01678.a1

DATE: 11/07/2011

DATE: November 7, 2011

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In Re:	)	
	)	
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	)	
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 December 22, 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 August 23, 2011, after the hearing, Administrative Judge Darlene D. Lokey Anderson 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 failed properly to apply the pertinent mitigating conditions. The Judge's favorable findings under Guideline F 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 a systems analyst and system trainer for a Defense contractor. He is married and has three children. Applicant has completed two years of college and is working on a business degree. He served in the U.S. Marines from 1998 to 2003.

Applicant has abused alcohol from approximately 1991 until at least February 2009. Between 1999 and 2009 he was arrested on four occasions for alcohol related offenses. Although he does not like the term "alcohol dependent," Applicant admits that he is an alcoholic.

In 1999, Applicant was arrested for DUI and for driving with a BAC of .08% or higher. He pled *nolo contendere* to reckless driving, and the two charged offenses were dismissed. He was given 45 days confinement. He testified that the matter was "swept under the rug."<sup>1</sup>

In 2005, Applicant was arrested for DUI and for driving with a BAC of .08% or higher. He pled *nolo contendere* to the second charge, and the court dismissed the first one. He was sentenced to a fine, three years probation, and completion of a first offenders course. He completed the course.

In 2008, Applicant was arrested for beating his spouse. He had consumed alcohol prior to the incident. The police report states that Applicant had come home late after having been drinking at a friend's house. His wife was upset and, at some point, grabbed a kitchen knife and came after Applicant. He grabbed her arm and "took her down." Decision at 4. She fell on the driveway and scraped her arms and legs. Upon his arrest, it was discovered that Applicant had an outstanding warrant. The assault charge was ultimately dropped due to insufficient evidence.

In February 2009, Applicant was arrested for DUI and for driving with a BAC of .08% or higher. He pled guilty to the second charge and the court dismissed the first one. He was sentenced to 20 days confinement, a fine, and to attend a multiple conviction program. He served 13 days in jail and was placed on five year probation. His probation was terminated in July 2011.

From March 2009 to August 2010, Applicant received outpatient treatment for alcohol dependence. The court had required him to attend an 18 month program, which he completed after the hearing. He has not attended Alcoholics Anonymous meetings since January 2011, nor has he actually worked the 12 step program, because he does not believe that he needs it.

Applicant enjoys an excellent reputation for the quality of his work performance. He is attending college and plans to start his own business once he finishes.

In the analysis, the Judge noted Applicant's sobriety, his completion of court-required

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<sup>1</sup>"I didn't have to pay a fine. I didn't have to go to any school, anything. Just they turned it over to the Marine Corps., and I didn't even have to serve 45 days restriction. They just gave me extra duty." Tr. at 92.

treatment, and the termination of his probation. However, she concluded that, given the extensive nature of his alcohol abuse and criminal conduct, it was premature to determine that Applicant had mitigated the Guidelines G and J security concerns.

At this point in his life, the Applicant seems to realize the seriousness of his disease and appears to have made a commitment to sobriety. He has made many positive changes in his life. He is commended for his efforts and encouraged to continue his alcohol free lifestyle. However, at this time, given his past extensive history of alcohol abuse, more time in rehabilitation is needed in order to guarantee the Government that he will not return to his old ways. Decision at 9.

Applicant seeks reversal of the Judge's decision, citing to the favorable evidence he presented, much of which the Judge explicitly discussed. He argues that his sobriety since the last DUI and the stability he has achieved in his personal affairs satisfy the mitigating conditions set forth in the Directive. Although he has presented a plausible favorable interpretation of the evidence, that is not enough to demonstrate that the Judge's decision was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 08-09236 at 4 (App. Bd. Jan. 14, 2010). Evidence of repeated criminal conduct, to include an incident involving serious acts of violence, support the Judge's holding that Applicant had not met his burden of persuasion as to mitigation.

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: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board