KEYWORD: Guideline G

DIGEST: The Appeal Board cannot consider new evidence on appeal. Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 11-05949.a1

DATE: 08/29/2013

DATE: August 29, 2013

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 Department of Defense (DoD) declined to grant Applicant a security clearance. On November 8, 2012, DoD 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 25, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge found: Applicant began drinking alcohol around age 18. He consumed alcohol, at times to excess and to the point of intoxication, from about 1991 to December 2012. He became intoxicated after three to five drinks and did so one to three times a week, until at least April 2012.

Applicant has been charged with DUI three times. The first, in 1991, resulted in a dismissal of charges because Applicant was not driving the car at the time of the arrest.[1] In 2009, Applicant was again arrested for DUI. He had consumed about six mixed drinks at a bar and attempted to drive home. He hit a patch of ice, spun out of control, crashed through a fence, and came to a stop in a vacant field. Applicant told police that he had drunk three beers at a local bar. Subsequent breath analysis yielded results of .173 and .179. Applicant pled guilty to reckless driving and was sentenced to 365 days confinement (with 363 suspended and two days converted to community service), fines, and court costs. Applicant was also required to attend a DUI Victim's Panel and an Alcohol/Drug Information School. He reduced his drinking somewhat during this period. An alcohol assessment determined that he had no significant problem with alcohol.

Applicant answered DOHA interrogatories in May, 2012. In these answers Applicant stated that he drank to the point of intoxication about once a week, but he advised that he did not intend to continue drinking alcohol. In February 2012, Applicant was arrested a third time for DUI. He had consumed three to six drinks containing Scotch, although it could have been more. He attempted to drive home, swerved over the center lane, and hit an oncoming car head-on. The person in the car Applicant hit was not seriously hurt. Contrary to his statement of intention in the DOHA interrogatory, dated May 1, 2012, Applicant continued drinking until December 2012.

Applicant demonstrated a month of successful participation in an outpatient alcohol treatment program and was granted entry into a deferred prosecution program. This program authorizes persons who have committed alcohol-related crimes and who are alcohol dependent to receive treatment for two years. If the offender succeeds in treatment, prosecution is deferred for an additional three years, after which charges are dismissed. Failure results in a conviction and imposition of sentence. As of the date of the hearing, Applicant had completed the first phase of the treatment program. He attends the required number of Alcoholics Anonymous meetings but does not have a sponsor because he has not found someone he trusts. He regularly goes to bars with friends but says that he does not consume alcohol. Applicant enjoys an excellent reputation for the quality of his work performance.

The Judge concluded that Applicant's circumstances raised concerns under Guideline G. He noted that Applicant had operated a vehicle on three occasions while drunk and that he had a history of habitual and binge consumption of alcohol. He stated that Applicant's history of alcohol-related offenses, the most recent having occurred after he submitted his application for a clearance,

[1]"Q: . . . So you drove for some of the . . . time, but then you turned the wheel over to your friend? A: Yes. We were playing golf. And I drove initially. And then I said, "Hey, you know, I'd rather have you drive." Tr. at 51.

evidenced bad judgment and does not permit a conclusion that his alcohol problems are in the past. The Judge stated that Applicant had provided no evidence of a substantial support network or of a favorable prognosis concerning future alcohol abuse. In the whole-person analysis, the Judge stated that Applicant's history of alcohol abuse, combined with regular attendance at bars and a recent DUI, raised doubt about his worthiness for a clearance that must be resolved in favor of national security.

Applicant's brief contains evidence not included in the record concerning the circumstances of his drinking habits. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See* ISCR Case No. 12-05359 at 3 (App. Bd. Jun. 7, 2013). Applicant contends that the record does not support the Judge's conclusion that his drinking evidenced bad judgment. He stated that there was no evidence that his judgement was impaired or that he drank to excess. The SOR alleged that Applicant drank, *at times to excess*, from 1991 to 2012, and Applicant admitted that allegation, as he did those concerning his DUI arrests. These admissions, and the evidence in the record, support the challenged statement by the Judge.

Applicant challenges the Judge's statement that he did not present evidence of a favorable prognosis or of a support network. He contends that Applicant Exhibit (AE) E constitutes a favorable prognosis. We have examined this document and conclude that it does not contain a prognosis within the meaning of Directive, Enclosure 2 ¶ 23(d).[2] AE E also states that Applicant "reports having a home group." Given evidence that Applicant still regularly visits a bar with friends who drink alcohol, the quoted language is not sufficient to undermine the Judge's conclusion that Applicant has not evidenced a substantial support network. The Judge's statements constitute reasonable characterizations of the record that was before him. *See, e.g.*, ISCR Case No. 04-11904 at 2 (App. Bd. Jul. 10, 2009).

Applicant argues that the Judge did not consider evidence of his having held a clearance for many years without incident or concern. While this was evidence that the Judge was required to consider, along with all the other evidence in the record, a Judge is not required to make findings about or to discuss every piece of record evidence, which would be a practical impossibility. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-05556 at 2-3 (App. Bd. Jun. 23, 2011).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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."

[2]"[T]he individual has successfully completed inpatient or outpatient counseling . . . and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker[.]" AE E describes Applicant's compliance with the requirements of his treatment program but it does not forecast the outcome of Applicant's treatment program.

Order

The Decision 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board