

KEYWORD: Guideline G; Guideline E; Guideline J

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

CASE NO: 11-12875.a1

DATE: 09/17/2013

DATE: September 17, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-12875
)	
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 February 13, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 10, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is an employee of a Federal contractor. He served in the U.S. military from 1989 to 1995. Applicant has a history of alcohol-related conduct. He was charged with DUI in 1998, his blood alcohol concentration (BAC) measuring .11% and .12%. His sentence included three years of probation. This incident was not alleged in the SOR.

In 2002, Applicant was again arrested and charged with DUI. This time his BAC was .18% and .19%. His sentence included summary probation, 14 days confinement, a fine, and 18 months of restricted driving privileges.

In 2011, he was arrested and charged with DUI, his BAC measuring .20% and .22%. His sentence included summary probation and 96 hours confinement, which was stayed.

In 2012, Applicant was cited for public intoxication, his BAC measuring .29%. He had been celebrating his birthday at a neighbor's house. Local law enforcement authorities concluded that he was unable to exercise care for his own safety and the safety of others. Applicant did not report this incident to probation officials.

Applicant stopped drinking in December 2012 and was last intoxicated the previous July. He attends alcoholics anonymous (AA) on an irregular basis. He has two sponsors in AA, one of whom is his brother.

The Judge's Analysis

Concluding that Applicant's problems with alcohol raised security concerns under each of the Guidelines alleged in the SOR, the Judge decided that Applicant had failed to meet his burden of persuasion regarding mitigation. He cited to evidence of the long-standing nature of Applicant's alcohol problems, the circumstances underlying his criminal charges, and the relative recency of his efforts at sobriety. He noted that Applicant remained on probation at the close of the record.

Discussion

Applicant cites to matters outside the record, which we cannot consider. Directive ¶E3.1.29. He also cites to evidence of his AA attendance and his commitment to sobriety. He argues that he has established a clear pattern of abstinence. The Judge discussed the favorable aspects of Applicant's record. However, given evidence of the frequency and seriousness of Applicant's alcohol-related infractions and that two of Applicant's offenses occurred after a two-year effort at abstinence (Tr. at 39-40; Government Exhibit 2, Answers to Interrogatories, at 8), the Judge's conclusion that Applicant had not been abstinent for a period sufficient to demonstrate genuine rehabilitation was supportable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record or that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-06157 at 2 (App. Bd. Nov. 20, 2012).

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.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, 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