

KEYWORD: Guideline G; Guideline E

DIGEST: The record supports the manner in which the Judge evaluated the evidence, in light of Applicant's history of pathological alcohol abuse, his diagnosis of alcohol-dependence, his criminal infractions related to alcohol, and his inconsistent or contradictory statements. That criminal charges were dropped, dismissed, or resulted in an acquittal does not preclude a Judge from finding that an applicant engaged in the conduct underlying those criminal charges. Adverse decision affirmed.

CASENO: 12-11795.a1

DATE: 05/16/16

DATE: May 16, 2016

_____)	
In Re:)	
)	
-----)	ISCR Case No. 12-11795
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq. , Chief Department Counsel

FOR APPLICANT

S. Ricardo Narvaiz, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 6, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 4, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in some of his findings of fact and whether the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant’s SOR alleges several incidents involving alcohol abuse. In 2005 he was driving under the influence of alcohol and engaged in a hit and run accident, a charge that was later dismissed. In 2007, he was again driving under the influence of alcohol and hit cars on the side of the road. He was placed on probation, paid a fine, and was required to attend substance abuse counseling. In December 2011, Applicant was arrested and charged with DUI. He pled guilty to other related charges, such as negligent driving and following too closely to another vehicle.

In 2012, Applicant was required to attend an intensive outpatient treatment program. The discharge document stated that Applicant “had a three-year history [of] pathological use of alcohol.” Decision at 3. Applicant was diagnosed as alcohol-dependent. He was enrolled in an aftercare program but stopped attending.

Applicant twice violated the interlock system on his car. He claimed he did not consume alcohol on these occasions, attributing the violations to food he had eaten and to a face-wipe that he had used.

Applicant’s answer to the SOR and his answers to interrogatories contained admissions that he had continued drinking after having been diagnosed as alcohol-dependent. At the hearing, he claimed that no one had told him about this diagnosis. He also stated that he had not consumed alcohol since the 2011 DUI.

The Judge found that Applicant’s contention that he had not consumed alcohol since 2011 to be lacking in credibility. He noted a Facebook entry in which Applicant acknowledged drinking to excess in mid-2014. The Judge found that Applicant continued to drink after his diagnosis and that up to the day of the hearing he stated an intent to continue drinking.

In his security clearance application, Applicant disclosed that in 2006 he had tested positive for marijuana and was dismissed from a job. He also disclosed other criminal offenses, such as reckless driving.

Applicant states that he has made significant changes to his lifestyle. He goes to the gym several days a week and is in a stable relationship with a girlfriend. He presented witnesses who expressed high opinions of his work performance and his integrity.

The Judge's Analysis

The Judge cited to Applicant's lengthy history of alcohol abuse, including three DUI incidents. Although Applicant has never been convicted of DUI, the Judge noted that Applicant had admitted the misconduct. He cited to evidence, such as Applicant's Facebook post, that show that Applicant continued drinking after his last arrest. The Judge cited to contradictions between Applicant's hearing testimony and prior statements in his answers to interrogatories and his SOR response. The Judge stated that Applicant had provided no evidence of current alcohol counseling or of a favorable diagnosis. He stated that, although Applicant has taken steps in the right direction, his case for mitigation was undercut by his contradictory statements. In the whole-person analysis, the Judge noted Applicant's favorable character evidence but concluded that it was not sufficient to mitigate the concerns arising from his misconduct.

Discussion

Applicant challenges some of the Judge's findings. For example, he contends that the Judge erred in finding that he was driving while intoxicated at the time of the 2005 hit-and-run. He argues that the record does not support the finding that he consumed alcohol in 2014 or that he had been informed of his alcohol-dependence diagnosis. We have considered Applicant's arguments in light of the record as a whole. Applicant testified that he had been drinking the day of the hit and run. Tr. at 111. When this is viewed alongside his testimony that he had fallen asleep at the wheel, it was not unreasonable for the Judge to conclude that Applicant was under the influence of alcohol at the time of the offense. The Judge's interpretation of the 2014 Facebook post is reasonable.¹ In addition, Applicant admitted that he had continued to drink despite his diagnosis and despite having been advised to abstain from alcohol. SOR Response, dated March 3, 2015. After considering the entirety of Applicant's arguments, we conclude that the Judge's material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant has not cited to any error in the Judge's decision that likely affected the outcome of the case.

Applicant challenges the Judge's weighing of the evidence. Among other things, he cites to evidence that some of his charges were dropped or otherwise not prosecuted as a reason that the Judge should have discounted the offenses. However, the record supports the manner in which the Judge evaluated the evidence, in light of Applicant's history of pathological alcohol abuse, his diagnosis of alcohol-dependence, his criminal infractions related to alcohol, and his inconsistent or contradictory statements. That criminal charges were dropped, dismissed, or resulted in an acquittal

¹In the Facebook post, dated June 2014, Applicant stated "Woke up feeling like I don't remember the last few hours of my life[.]" Government Exhibit 8 at 2. Reading this in light of the totality of the record evidence, a reasonable person could find that the post was referring to excessive alcohol consumption.

does not preclude a Judge from finding that an applicant engaged in the conduct underlying those criminal charges. *See, e.g.*, ISCR Case No. 14-01763 at 4, n. 5 (App. Bd. Nov. 3, 2015). Neither does such a disposition of charges mean that the offenses are necessarily entitled to little weight. We find no reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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 Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board