

KEYWORD: Guideline G; Guideline J; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence. An ability to argue for a different interpretation of the evidence is not sufficient to show that the Judge mis-weighted the evidence. Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. We have no authority to remand a case simply for the purpose of taking in new evidence. The Judge examined Applicant’s circumstances in light of the entirety of the evidence. Therefore, there is no error in his whole-person analysis. Adverse decision affirmed.

CASE NO: 14-00976.a1

DATE: 02/05/2015

DATE: February 5, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00976
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 29, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 19, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul

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's Findings of Fact

Applicant is a 28-year-old employee of a Defense contractor. He served in the U.S. military from 2004 to 2009 and has taken some college courses.

Applicant's SOR alleges two instances of DUI. The first occurred in 2008, in which Applicant was charged with and convicted of having a blood alcohol level of .08% or more while driving. He was sentenced to summary probation for three years, attendance at a First Conviction program, and a fine. The second occurred in 2011, while he was still undergoing probation for the first offense. The court sentenced him to four days confinement, summary probation for five years, a fine, and attendance at a Second Time alcohol awareness program.

In 2012, Applicant was charged with and convicted of driving with a suspended license. He contended that he was driving because there was no public transportation available to get him to his job. Applicant conceded that he also drove in order to visit friends in another city and that he drove regularly as though his license had not been suspended. Applicant was required to pay a fine. In addition, 90 days were added to his previous suspension.

Applicant still consumes alcohol. He drank three or four beers a week or so before the hearing. He admitted that he had consumed alcohol to the point of intoxication at least 10 times since 2011. He stated that, since 2011, he has not driven a vehicle after consuming alcohol.

Applicant enjoys a good reputation for his military service, job performance, responsible use of alcohol, and reliability. Applicant signed a statement of intent never to abuse alcohol again.

The Judge's Analysis

In concluding that Applicant had not mitigated the concerns arising from his misconduct, the Judge noted evidence that he had continued to drink to intoxication despite having twice been convicted of DUI. He also stated that Applicant's having driven with a suspended license was a knowing violation of the law. The Judge concluded that none of the mitigating conditions under any of the Guidelines alleged in the SOR were applicable.

Discussion

Applicant argues that the Judge failed to consider evidence such as his good duty performance, his military career, and his statement of intent not to abuse alcohol. The Judge made findings about the evidence that Applicant has cited. However, given the Judge's other findings

about the multiple nature of the DUIs and Applicant's knowing and repeated violation of his driving suspension, his adverse decision is supportable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). To the extent that Applicant is contending that the Judge did not extend the appropriate weight to the cited evidence, we note that a disagreement with a Judge's weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to undermine a Judge's decision. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014). Applicant's brief cites to some Hearing Office Decisions that he believes support his case for mitigation. While we give these cases due consideration, they do not undermine the Judge's adverse decision. Hearing Office Decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug. 29, 2013).

Applicant requests that we either reverse the Decision or remand it to the Judge to take in additional evidence or to perform a new whole-person analysis. We have no authority to remand a case simply for the purpose of taking in new evidence. *See, e.g.*, ISCR Case No. 02-20403 at 4 (Apr. 7, 2003). For reasons set forth above, we find no cause to set aside the Judge's whole-person analysis. The Judge examined Applicant's circumstances in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 12-03077 at 2-3 (App. Bd. May 13, 2013).

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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

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