

KEYWORD: Guideline G

DIGEST: The Judge made findings about Applicant’s favorable evidence and discussed that evidence in his Analysis. Applicant’s argument is not enough to rebut the presumption that the Judge considered all the evidence. Neither is it enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 14-05201.a1

DATE: 08/05/2015

DATE: August 5, 2015

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 14-05201 |
|                                  | ) |                        |
| 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 November 12, 2014, 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 May 29, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 works for a Defense contractor. A high school graduate who has a certificate of completion in administrative justice, Applicant's record contains no evidence of security violations, illegal drug use, or criminal offenses other than DUI.

In 2009, Applicant was arrested for DUI, his blood alcohol content (BAC) registering .29%. Applicant was scheduled to report for work as a security guard four hours after the time of his arrest. He stated that he was not sure if he would still have been under the influence of alcohol when starting work. He did not feel like he was under the influence of alcohol at the time of his arrest. Applicant was entered into a first offender program, paid a fine, and underwent three years of unsupervised probation. He was required to watch videos about the impact of DUI.

In late 2011, while still on probation, Applicant rear-ended a car during stop-and-go traffic. His BAC was .1%, more than the threshold of .08%. Applicant was sentenced to a fine, restitution, and to an additional three years of probation. He received in-person instruction on the impact of DUI. It was suggested to him that he curtail his consumption of alcohol, although he was not told that he was an alcohol abuser.

Applicant has never attended Alcoholics Anonymous (AA), nor has he had alcohol counseling. He drank 64 ounces of beer about a week prior to the hearing, becoming intoxicated. He drinks this amount about once or twice a week. He has not reduced his alcohol consumption since his second DUI, although he is careful not to drink and drive. He does not believe that his alcohol consumption has affected his personal relationships or work.

### **The Judge's Analysis**

The Judge concluded that none of the mitigating conditions applied to Applicant's circumstances. He noted that Applicant has not attended AA or received counseling and that he continues to consume alcohol to the point of intoxication. The Judge concluded that Applicant had not established a pattern of responsible alcohol use, nor had he provided a favorable diagnosis from a medical professional or licensed counselor. The Judge noted that Applicant's first offense entailed a .29% blood alcohol level just four hours before he was to report for duty as a security guard. In the whole-person analysis, the Judge cited to Applicant's favorable evidence. He went on to state, however, that driving under the influence of alcohol shows a lack of judgment, rehabilitation, and impulse-control.

## Discussion

Applicant cites to some Hearing Office decisions that he believes support his case for a clearance. We have given these cases due consideration as persuasive authority. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 12-08417 at 2 (App. Bd. Jun. 24, 2015). Applicant cites to his favorable evidence, such as his good work record, his lack of security violations, and the length of time since his last DUI. The Judge made findings about Applicant's favorable evidence and discussed that evidence in the Analysis. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01509 at 2 (App. Bd. Jan. 29, 2015).

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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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