

KEYWORD: Guideline G; Guideline F; Guideline E

DIGEST: Disagreement with a Judge’s weighing of the evidence, or the ability to argue for a different interpretation of the evidence, is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

CASE NO: 14-05362.a1

DATE: 11/07/2016

DATE: November 7, 2016

In Re:)	
-----)	ISCR Case No. 14-05362
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 December 2, 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 F (Financial Considerations), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 23, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G.

Ricciardello 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. The Judge's favorable finding for Applicant on the sole Guideline E allegation has not been raised as an issue on appeal and is not discussed further. Consistent with the following, we affirm the Judge's unfavorable clearance decision.

The SOR alleged that Applicant consumed alcohol, at times to excess and the point of intoxication, from 1982 to 2012; that he had three driving under the influence/driving while intoxicated convictions; and that he had seven delinquent debts totaling about \$14,000. In the appeal, Applicant does not challenge any of the Judge's findings of fact, but argues he encountered health problems that resulted in him being out of work for a year and that he returned to work in January 2016.¹ This statement appears to be contradictory with his testimony. At the hearing held on July 18, 2016, he testified that he had been steadily employed since 2000 and had not been unemployed for any period. Tr. at 18. His statement in the appeal about being out of work for a year constitutes new evidence that the Appeal Board cannot receive or consider. Directive ¶ E3.1.29.

In the appeal, Applicant also argues that he has learned from his bad choices, no longer drinks alcohol, and is not a security risk. Such arguments amount to a disagreement with the Judge's weighing of the evidence. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is 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 evidence and articulated a satisfactory explanation for the decision. Applicant has not identified any harmful error likely to change the outcome of the case. 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."

¹ In addition to his appeal brief dated September 14, 2016, Applicant later submitted a one-page undated handwritten document that raised no allegations of error. Of note, the Judge made findings of fact about Applicant's health problems, but did not make any findings about him being out of work. He testified that he had surgery in October 2015. He also testified he was released from the hospital in January 2016. It is not clear from the record whether the two dates cited are from the same hospitalization. Tr. at 25 and 30.

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