

KEYWORD: Guideline J; Guideline G; Guideline E

DIGEST: Applicant has failed to rebut the presumption that the Judge considered all of the evidence. Applicant has not shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 14-05484.a1

DATE: 09/28/2015

DATE: September 28, 2015

In Re:)	
)	
-----)	ADP Case No. 14-05484
)	
Applicant for Public Trust Position)	
)	

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 trustworthiness designation. On February 4, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline J (Criminal Conduct), 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 July 22, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant’s request for a trustworthiness designation. 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. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has an extensive history of criminal conduct and alcohol abuse. In late 2003 she was fired from a job for having shown up for work under the influence of alcohol and on two different occasions the following year was arrested for alcohol-related offenses. She was 20 years old at the time. In the latter half of 2005, Applicant was arrested four times for DWI. Applicant was convicted of that offense, as she also was for having uttered a bad check. The next year she participated in a 28-day inpatient treatment program, where she was diagnosed as alcohol dependent. After release, she resumed drinking and was later cited for having an open container of alcohol in her vehicle. Over a 2 1/2 year period ending in 2006, Applicant spent about 30 days in jail for various offenses. She was also placed on probation four times.

In 2007, Applicant was charged with fleeing a police officer and obstructing the legal process. Later she was charged with disorderly conduct. Applicant served time in jail from February to July of 2007. In 2010, she was charged with DWI and, one month later, while on bail, she was arrested and charged with operating a vehicle while intoxicated (OWI) and felony eluding, among other things. She pled guilty to felony OWI and felony eluding and was sentenced to five years in jail. Applicant was imprisoned from March 2011 until June 2012, whereupon she entered a work release program. Applicant was placed on parole until April 2013. While in jail, Applicant received alcohol treatment. After leaving prison in 2012, she continued with treatment and also attended Alcoholics Anonymous (AA) until January 2013. Applicant does not consider herself to be alcohol dependent at this time but recognizes the problems that it has caused her in the past. Her last drink was in 2011, "before she entered the criminal justice system." Decision at 3. She has not participated in any type of aftercare or AA since January 2013.

Applicant has successfully completed substance abuse treatment programs. She has received a high performance evaluation with subsequent promotion. In February 2015, Applicant received a bonus for excellent performance of duty.

The Judge's Analysis

The Judge cited to evidence that Applicant has not participated in aftercare programs since January 2013, concluding that the record contains insufficient evidence that her trustworthiness-significant conduct is behind her. The Judge stated that Applicant had not presented a statement from a health care provider containing a favorable prognosis. The Judge also cited to Applicant's good employment record. The Judge concluded that Applicant's history of alcohol abuse and criminal conduct raise concerns that her evidence of rehabilitation was not sufficient to mitigate.

Discussion

Applicant cites to record evidence that is favorable to her, such as her four years of sobriety, her participation in treatment programs and AA, the five years since her last criminal offense, and her excellent job performance. She contends that she has demonstrated rehabilitation. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.* ADP Case No. 13-00584 at 3 (App. Bd. Apr. 24, 2014). Applicant argues for a different interpretation of the evidence. However, her argument is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.*

The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

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