

KEYWORD: Guideline G; Guideline J

DIGEST: The fact that Applicant has had no alcohol-related incidents since 2014 and has remained sober for more than a year does not compel the Judge to make a favorable clearance decision. The Appeal Board has never established a “bright line” rule as to the recency of conduct raising security concerns. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. Adverse decision affirmed.

CASENO: 15-02479.a1

DATE: 07/27/2016

DATE: July 27, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-02479
)	
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 November 10, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 10, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 47-year-old employee of a defense contractor. He has worked in the defense industry since 2003. He is married and has three children. He is active in the community and has held a security clearance for about 13 years.

In 1987, Applicant began consuming alcohol at about age 18. In 1988 and 1996, he was arrested and charged with driving under the influence (DUI). He was convicted of those offenses and punished. In 2005, he was arrested and charged with DUI, but was convicted of reckless driving. In 2011, he was arrested and charged with DUI and later convicted of that offense. He was required to attend a 12-week alcohol rehabilitation program and believes he was placed on probation for two years. In 2014, he was arrested and charged with speeding, fleeing and evading, wanton endangerment, and DUI. At that time, his blood alcohol content was .240. About seven months later, he pled guilty to all of the charges (the DUI charge was reduced to a misdemeanor), and he was sentenced to 14 days in jail, 26 weeks of probation, and ordered to attend his second alcohol education program, which he completed in March 2015. His probation was scheduled to end in early April 2016.

Although Applicant considers himself an alcoholic, he has not been diagnosed as alcohol dependent or as an alcohol abuser. He has experienced blackouts a couple of times. After completing his alcohol education program, he has not participated in any ongoing substance abuse programs, such as Alcohol Anonymous. For emotional support, he speaks to his pastor and sister. He has never been told to stop consuming alcohol nor advised to participate in any aftercare program. He stated that he has changed his life following his last DUI charge and his date of sobriety is January 1, 2015.

Applicant has a successful employment history. He submitted favorable letters of recommendations from colleagues as well as current and former supervisors. In February 2016, he received an employee of the month award.

The Judge’s Analysis

The Judge found that Applicant had a history of alcohol abuse that spanned from 1988 to 2014. Although Applicant recognizes his alcohol problems, he has not yet established a sustained track record of abstinence. No evidence of a favorable prognosis from an appropriate healthcare professional was presented. The Judge concluded that enough time has not passed since he last consumed alcohol in January 2015, and it was too soon to determine that similar misconduct will not recur.

Discussion

In the appeal brief, Applicant contends the Judge did not render a fair decision by highlighting that he has been sober for 18 months and two years have passed since his “last infractions.” He argues that his non-participation in a 12-step program does not mean that he cannot maintain sobriety and notes he has made positive lifestyle changes and found tremendous strength through his church, family, and friends.

The fact that Applicant has had no alcohol-related incidents since 2014 and has remained sober for more than a year does not compel the Judge to make a favorable clearance decision. The Appeal Board has never established a “bright line” rule as to the recency of conduct raising security concerns. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. *See, e.g.*, ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). Specifically, the Judge has to weigh the record evidence in its entirety, including Applicant’s five alcohol-related arrests and his four DUI convictions, in deciding whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. Applicant’s disagreement with the Judge’s weighing of the evidence, or his 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. 14-06634 at 2 (App. Bd. Apr. 28, 2016). Applicant has not identified any harmful error likely to change the outcome of the case.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. “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.” The decision is sustainable on this record.

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 F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board