

KEYWORD: Guideline G

DIGEST: Applicant’s history of alcohol abuse spans more than thirty years, which includes three incidents of criminal behavior. Evidence of alcohol rehabilitation spanning only three months does not establish a sufficient track record of rehabilitation and good judgment. Adverse decision affirmed.

CASENO: 06-16005.a1

DATE: 08/05/2008

DATE: August 5, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-16005
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 3, 2007, DOHA issued a statement of reasons 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. At the hearing, the SOR was amended to delete a Guideline G allegation and to add security concerns under Guideline J (Criminal Conduct). On April 30, 2008, after the hearing,

Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her application of the Guideline G mitigating concerns; and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact:

Applicant is a 47 year old veteran of the United States Air Force. He is a software engineer for a federal contractor. He has held a security clearance for 25 years.

Applicant began consuming alcohol while in high school. He told a substance abuse evaluator that he drank five or six beers on a daily basis in the mid-eighties and that after leaving the Air Force in 1987 he would stop off after work two to four times a week and consume three or four beers. In February 1996, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). He pled guilty to a reduced charge of "Reckless Operation," paying a \$125 fine and attending a two-day treatment program.

In 2002, Applicant became involved in an altercation with his son, striking his son's face. He subsequently admitted that he had been drinking prior to the incident. Applicant was charged with Domestic Violence, but pled guilty to Attempted Assault, a lesser offense. Applicant paid a \$185 fine, was placed on probation for a year, and was required to undergo an alcohol assessment and attend an anger management course. In May 2005, Applicant was charged with Child Endangering, after having struck his daughter repeatedly with a belt.² He paid a \$66 fine. He states that he had not been drinking prior to this incident. In January 2008, Applicant attended sessions with a professional clinical counselor, who diagnosed him as having a history of alcohol abuse, in early remission. This report stated that Applicant had not had a drink since January 13, 2008. In March 2008, Applicant obtained another assessment, this time from a clinical psychologist, whose report stated that Applicant "possesses a low risk for . . . relapse behaviors." Decision at 5. Applicant has never gone to work after consuming alcohol. His character witnesses, both at the hearing and through documentary evidence, attest to Applicant's good character and to their view that he does not abuse alcohol.

The Judge stated that Applicant's history of excessive alcohol abuse, and his relatively recent commitment to sobriety, prevented her from favorably applying the Guideline G mitigating factors. Decision at 8. Furthermore, in her whole-person analysis, she stated that Applicant's "history of alcohol abuse spans more than thirty years, during which time he engaged in at least three criminal

¹The Judge's favorable decision under Guideline J is not at issue in this appeal.

²See Government Exhibit 6, Police Records, at 3: "[S]he stated that she had been beat [sic] by her father with 2 belts and still have [sic] bruising from a week to a week and a half ago . . . She said the beatings from her father would take place by her standing on a treadmill holding on to the bar while her father had a leather belt in each hand and would . . . beat her. She said that the beating will usually go on for more than 20 hits with the belts but she stated that she had lost count."

incidents that were indicative of poor judgment and a lack of self-control.³ His evidence of alcohol rehabilitation spans three months. While he appears dedicated to his recovery program, he has not established a sufficient track record of rehabilitation and good judgment . . . to persuade me that he has conquered his alcohol related issues.” Decision at 10.

A review of the entire record demonstrates that the Judge has drawn “a rational connection between the facts found” and his ultimate adverse security clearance decision, both as regards the Guideline G mitigating conditions and the whole-person analysis. See ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). See also *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s decision that “it is not clearly consistent with national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 11. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, 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

³Applicant argues that it was error for the Judge to consider the May 2005 incident due to Applicant’s denial that alcohol was involved. To the extent that alcohol was not involved in this incident, the Board cannot see how Applicant’s case for being granted access to classified information is strengthened by the incident.