

KEYWORD: Guideline G; Guideline J

DIGEST: In this case, the Judge reasonably weighed the available mitigating evidence against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She found in favor of Applicant under Guideline G and as to one of the SOR factual allegations under Guideline J. However, she reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. Adverse decision affirmed.

CASENO: 14-06532.a1

DATE: 06/08/2017

DATE: June 8, 2017

In Re:)	
)	
-----)	ISCR Case No. 14-06532
)	
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, 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 decision on the administrative record. On February 22, 2017, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Carol

G. Ricciardello denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision is arbitrary, capricious or contrary to law.

Applicant requested that his case be decided on the written record and then did not respond to the government's File of Relevant Material (FORM). In his appeal brief he states that the Judge's decision was "made in error and hastily" and recites some of the underlying facts in his case, implying that the Judge did not correctly weigh the evidence. He also presents some new evidence, which the Board cannot consider on appeal. *See* Directive ¶ E3.1.29. Applicant's presentation does not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. 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. 15-02659 at 2 (App. Bd. Apr. 28, 2017).

In this case, the Judge reasonably weighed the available mitigating evidence against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. Decision at 4-7. She found in favor of Applicant under Guideline G and as to one of the SOR factual allegations under Guideline J. However, she reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. *Id.* The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data 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." Therefore, the Judge's unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

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

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

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