

KEYWORD: Guideline G; Guideline E; Guideline F

DIGEST: Applicant contends that the Judge’s adverse decision should be reversed because the Judge did not correctly weigh the evidence. Applicant’s arguments do not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law. Adverse decision affirmed.

CASENO: 15-02659.a1

DATE: 04/28/2017

DATE: April 28, 2017

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In Re:	)	
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	)	
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 January 15, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 14, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed

pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.<sup>1</sup>

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

Applicant contends that the Judge's adverse decision should be reversed because the Judge did not correctly weigh the evidence. Specifically, he argues that he is not alcohol dependent because he has had no alcohol-related incidents for over seven years. He also argues that the Judge did not give him sufficient credit for the fact that he has served his country for over 17 years in the aerospace industry, has never been late for work, has never been reprimanded for misconduct, and has never showed any form of inability to perform his duties. Appeal Brief at 1. Applicant's arguments do not demonstrate that the Judge's decision is arbitrary, capricious or contrary to law.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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. 14-01918 at 2 (App. Bd. Jul. 8, 2015).

In this case, the Judge found that Applicant had a long history of excessive alcohol consumption that included three driving under the influence of alcohol (DUI) convictions between 1999 and 2009. Some of the incidents involved associated charges such as driving on a suspended license or hit-and-run. Applicant received alcohol treatment in 2007 and 2008, and was diagnosed as alcohol dependent. Decision at 2. In reaching his adverse decision, the Judge considered Applicant's evidence "attesting to his strong moral character, excellent job performance, expertise, work ethic, responsibility, and trustworthiness" and the fact that "his last DUI was more than 9 years ago." *Id.* at 3 and 5. However, he noted that Applicant had "exhibited extremely poor judgment on multiple occasions" and that he "currently drinks about two to three beers, four nights a week, and about six to eight beers on the weekend" despite a prior alcohol-dependence diagnosis. *Id.* at 5. As a result he concluded that Applicant's alcohol-related conduct "continued to cast doubt on his reliability, trustworthiness, and good judgment" and that there were "no mitigating conditions sufficiently applicable to dispel security concerns about Applicant's alcohol use." *Id.*

In light of the foregoing, the Judge could reasonably conclude that Applicant's history of alcohol abuse still presented a security concern and that Applicant had not met his burden of persuasion as to mitigation. *See, e.g.*, ISCR Case No. 09-02566 at 2-3 (App. Bd. Nov. 12, 2010). The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. Decision at 4-7. He found in favor of Applicant under Guideline F and as to several of the SOR factual allegations under Guidelines G and E. However, he reasonably explained why the mitigating evidence was insufficient to overcome the government's security concerns. *Id.* The

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<sup>1</sup>The Judge's favorable finding under Guideline F is not at issue on appeal.

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: Michael Y. Ra’anan

Michael Y. Ra’anan  
Administrative Judge  
Chairperson, 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