

KEYWORD: Guideline G; Guideline J

DIGEST: In 2012, Applicant was charged with felony hit and run, driving while under the influence of alcohol (DUI), and refusal to take a breath test. She was found guilty of DWI. Adverse decision affirmed.

CASENO: 15-03742.a1

DATE: 06/09/2017

DATE: June 9, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-03742
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 1, 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 March 7, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her findings of fact and 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 42-year-old employee of a defense contractor. She admitted that she had four alcohol-related driving arrests between 1998 and 2012. The charges arising from arrests in 1998 and 2002 were dismissed, although she acknowledged drinking before driving on those occasions. In 2004, she was charged with driving while intoxicated (DWI) after leaving a wedding reception, was found guilty of that offense, paid fees and fines, and completed probation. She did not recall whether she had any alcohol evaluations or counseling after these first three incidents.

In 2012, Applicant was charged with felony hit and run, driving while under the influence of alcohol (DUI), and refusal to take a breath test. She was found guilty of DWI and sentenced to 180 days incarceration (170 days suspended), a fine, and ordered to complete an alcohol awareness program. She also sought counseling on her own. She explained that she stopped her vehicle following a minor accident, that she and the other driver agreed to call the police, and that they decided to move their vehicles from an intersection, but the other driver left the area. She parked her car on a side street and waited about 20-30 minutes. The police did not arrive and she could not find the other driver. When the police came to her apartment, she initially denied that she had been drinking, but did admit to having wine at dinner. She refused a breath and field sobriety test.

In 2013, a licensed professional counselor noted Applicant did not meet the DSM-IV criteria for any diagnosis. In 2015, Applicant contacted a clinical psychologist for a substance abuse evaluation. The clinical psychologist's report noted that Applicant was in an inpatient treatment program for alcohol dependence after her 2004 alcohol incident. Following the psychologist's recommendation for therapy and counseling, Applicant had an initial intake in 2016 and attended weekly therapy sessions. In February 2016, an abuse counselor noted Applicant met the diagnostic criteria under DSM-5 for alcohol use disorder in early remission. The counselor also stated, "continued work in therapy and continued abstinence indicate a positive prognosis." Decision at 5, citing Applicant's Exhibit (AX) A. At the hearing, Applicant stated she was not currently abstaining from alcohol, but drinks socially with friends. She may drink two or three glasses of wine. Despite the counseling and recommendations for abstinence from alcohol, she feels she is in control and if there is a social event she will drink. She denied that her counselor advised her to abstain from drinking alcohol and does not believe she has a problem with alcohol. She does not drink and drive.

Applicant submitted a number of letters of recommendation that attest to her character, dedication, and integrity. A senior executive service official states that Applicant maintains the character requirements to perform in a highly sensitive and pressure-oriented job.

The Judge's Analysis

Applicant admits to a history of alcohol-related incidents from 1998 to 2012. She was diagnosed with an alcohol use disorder. Five years have elapsed since her last incident. She provided information about her counseling and success at work. Even though she has been consistently advised to refrain from drinking, she drinks and states that she is in control. The fact

that she still drinks casts doubt and she has failed to show that, despite the passage of time, a similar incident is unlikely to recur.

Discussion

Applicant contends that she was not diagnosed as alcohol dependent but with an alcohol use disorder. Of note, the Judge did not specifically find that Applicant was diagnosed as alcohol dependent. The Judge found the clinical psychologist's report reflected that Applicant received inpatient treatment for alcohol dependence after her 2004 alcohol incident, which is an accurate summary of that report. *See*, AX A (page 3 of clinical psychologist's report dated December 8, 2015). We find no error in the Judge's finding.

Applicant argues that the Judge misapplied the mitigating conditions. She highlights, among other matters, that she has participated in regular counseling and therapy, that she has established a pattern of responsible alcohol consumption, that she has had no adverse alcohol issues since 2012, and that she has never had a work-related alcohol incident. She also asserts the Judge placed too much weight on her lack of alcohol abstinence because she has not been diagnosed with alcohol dependence. 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

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: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

Signed: James F. Duffy

James F. Duffy

Administrative Judge

Member, Appeal Board