KEYWORD: Guideline: G

DIGEST: The Judge properly considered the evidence as a whole and did not view it in an isolated and piecemeal manner. Adverse decision affirmed.

CASENO: 15-07791.a1

DATE: 06/22/2017

DATE: June 22, 2017

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
Robert H. Deaderick, Jr., Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 23, 2016, DoD issued a statement of reasons (SOR) 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 decision on the written record. On March 28, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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 54-year-old employee of a Federal contractor. He is excellent at his job and has had no security violations. He is divorced and has three adult children who reside with him while they attend college.

Applicant consumed alcohol at times to excess and the point of intoxication from approximately 1979 to 2000 and 2007 to 2014. In 1980 and 1987, he was charged with driving under the influence (DUI) and was convicted of both offenses. In 1989, he was determined to be an alcohol abuser while attending an alcohol safety action program (ASAP). In 1992, he was arrested for public intoxication. He remained sober from 2000 until his wife left him in 2007, which triggered a difficult time and an alcohol relapse.

In 2009, Applicant was charged with DUI and was later convicted of that offense. In 2011, he was charged with DUI and resisting arrest. He noted the officer accosted him, which resulted in an ethics investigation against the officer. The 2011 charges against him were dismissed. In 2014, he was charged with DUI and was convicted of that offense. He was sentenced to one year of probation and 180 days of imprisonment, of which he served 20 days. He has abstained from alcohol since October 2014. He attended ASAP sessions in 2014 and 2015 and received certificates for his participation in alcohol awareness and counseling in 2015.

The Judge's Analysis

Applicant has a troubled history with alcohol. He has abstained from alcohol for over two years, but his prior attempt at sobriety between 2000-2007 failed. He continues with AA, is sustaining his abstinence, and acknowledges his alcohol abuse; however, particularly worrisome is the frequency of his very serious alcohol-related offenses that demonstrate reckless behavior toward himself and others. "[I]n light of the nearly 35-year span, albeit interrupted, period of alcohol abuse, more time is needed to establish a record of sustainable abstinence or responsible alcohol use. This is particularly true absent a positive prognosis by a qualified medical practitioner or [licensed clinical social worker]." Decision at 6.

Discussion

In the appeal brief, Applicant argues the Judge overstated his history of alcohol abuse. In doing so, he does not challenged any of the Judge's specific findings of fact, but essentially argues that the 35-year period under review be analyzed in separate segments and his earlier alcohol-related incidents are distinguishable from his latter incidents. He describes the earlier incidents as "youthful drinking" that were conflated.[1] Appeal Brief at 2 and 4. He highlights that he had no alcohol-related

[1] In arguing that his early alcohol-related incidents constituted "youthful drinking," Applicant cites to a Hearing Office decision that is neither binding on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). This Hearing Office decision is distinguishable and does not undermine

incident between 1992 and 2009, refrained from alcohol consumption between 2000 and 2007, and contends his three latter DUI arrests stem from his marital separation and divorce. He further contends that the Judge, in treating his drinking as one long episode, failed to take into account the whole-person factor of "the frequency and recency of the conduct." Directive, Enclosure 2 ¶ 2(a)(3). We do not find Applicant's argument persuasive. In essence, Applicant is advocating for a "piecemeal analysis" of the evidence. The Appeal Board has long held that such an approach is inappropriate. When weighing the evidence, the Judge must consider the evidence as a whole and not view it in an isolated and piecemeal fashion. *See, e.g.*, ISCR Case No. 02-11489 at 4 (App. Bd. Sep. 11, 2003). *See also*, *Raffone v. Adams*, 468 F. 2d 860, 866 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation). In analyzing this case, including the whole-person concept, the Judge properly considered the evidence in its entirety.

The balance of Applicant's arguments amount to a disagreement with the Judges weighing of the evidence. Specifically he contends that the Judge erred in his application of Mitigating Condition 23(a).[2] He argues that no doubt exists regarding his current reliability because enough time has passed since his last alcohol-related incident and emphasizes that his negative reaction to his marital woes have ceased and that he has recognized and promptly addressed his alcohol problem. The fact that Applicant has not had an alcohol-related incident since 2014 and has remained sober for more over two years does not compel the Judge to make a favorable clearance decision. The Appeal Board has never established a "bright line" rule for determining the recency of conduct that raises 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 six alcohol-related incidents, four of which resulted in 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 this 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

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the Judge's decision in this case.

[2] Directive, Enclosure 2 ¶ 23(a) states: "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, and good judgment[.]"

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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