

Applicant raised the following issues on appeal: whether the Judge erred in concluding he is an alcoholic 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 54-year-old employee of a defense contractor. He is divorced with two children. He started consuming alcohol at age 21. After he and his ex-wife separated in 2009, he went to a bar once or twice during the week and on weekends to avoid loneliness. He was never a daily drinker nor drank at home alone, but described himself as more of a "binge drinker." Decision at 2. In 2010, he was arrested and charged with driving under the influence of alcohol (DUI). He blew a .12% on a breathalyzer test. He pled nolo contendere to the DUI charge and was sentenced to a fine and required to attend a six-month alcohol awareness class, a Mothers Against Drunk Driving (MADD) class, and Alcohol Anonymous (AA) meetings. After his arrest, he stopped consuming alcohol for about six to eight months, but then returned to socializing with friends at a bar.

In 2015, Applicant went to the bar following a promotion. Friends bought him drinks to celebrate. He consumed about six or seven beers before driving home. He was pulled over by the police, arrested, and charged with DUI. He spend four days in jail. He pled nolo contendere to the DUI charge and was sentenced to five days in jail, four years of probation, community service, an 18-month second offender alcohol and drug education and counseling program, and a substantial fine. He remains on probation until 2018.

Applicant does not believe he is an alcoholic. However, a letter from the alcohol awareness course he is attending characterizes him as a "self-admitted alcoholic relating traditional symptoms of alcoholism, including loss of control over intake once drinking commenced." Decision at 3, citing Applicant's Exhibit (AE) B. He attended only the counseling and AA meetings that the court ordered. He does not have an AA sponsor and has not worked on the 12-step program. He no longer goes to bars to socialize.

Applicant has received accolades as a stellar performer. In 2014 and 2015, he received the highest work performance rating.

The Judge's Analysis

Applicant is an alcoholic who is a binge drinker. He remains in denial and does not believe he is an alcoholic. None of the mitigating conditions are applicable. He claims that he has not consumed any alcohol since his last DUI arrest. He is commended for this effort and encouraged to continued with his sobriety; however, given that he has abused alcohol for years, simply quitting for a year or so is not enough to show he will not relapse again.

Discussion

Applicant contends that the Judge erred in concluding that he is an alcoholic and remains in denial, but acknowledges that he has a “problem/issue with alcohol consumption as an occasional alcohol abuser (binge).” Appeal Brief at 1. In deciding whether the Judge's analysis or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

At the hearing, Applicant offered into evidence a letter from the director of an alcohol counseling program who is a certified addictions treatment counselor (CATC). The letter stated, as quoted by the Judge, that Applicant enrolled in the program “as a self-admitted alcoholic; relating traditional symptoms of alcoholism, including loss of control over intake once drinking commenced.” Decision at 3. The letter also stated that Applicant came to accept his alcoholism through participation in the program. AE B. At the hearing, Applicant testified that he did not believe he was an alcoholic but was a binge drinker. He further stated he does not need alcohol, can do without it, and never has been diagnosed as an alcoholic, but acknowledged his binge drinking was an alcoholic symptom. Tr. at 50-56. In the Appeal Brief, Applicant contends that he is smart and has properly diagnosed his own alcohol issues. From our review of the record, the Board finds that the Judge’s conclusions about the nature of Applicant’s alcohol problem are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also contends the Judge erred in other findings and conclusions. For example, he asserts that she erred in concluding he abused alcohol for over 35 years. He testified that he began consuming alcohol at age 21 (Tr. at 32) and points out that, according to the Judge, he would have begun consuming alcohol at age 19. Even though the Judge erred in her calculation about the span of his alcohol consumption and may have erred in other regards, we conclude any of those errors were harmless because they likely had no impact on the ultimate decision. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015).

At the hearing and in his Appeal Brief, Applicant stated that he met with a Government representative in late 2015, was informed that he could retain his security clearance, and signed a warning letter. Tr. at 18. The record of this proceeding does not contain the warning letter. Even if we consider his statements in a light most favorable to him, we do not conclude that, when DoD issued the SOR in 2016, there was a current investigation or adjudication of Applicant in place by any other agency. Therefore, the reciprocity provisions in either Executive Order 13467 or DoD 5520.22-M, *National Industrial Security Program*, are not applicable in this case. *See, e.g.*, ISCR Case No. 04-12742 at 3 (App. Bd. Feb. 25, 2011).

Applicant argues the Judge erred in her mitigation and whole-person analysis. In doing so, he cites to such matters as his career achievements, his successful completion of an 18-month

substance abuse program, his willingness to take alcohol tests, and his 21 months of sobriety. These arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). Additionally, we find no basis for concluding the Judge erred in her whole-person analysis.

Applicant has not identified any harmful error likely to change the outcome of the 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

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