

KEYWORD: Guideline G; Guideline J

DIGEST: The Directive does not prescribe a defined period of abstinence or good behavior for alcohol offenses. Rather, each case must be evaluated upon its own merits. In the case before us, several years elapsed between Applicant’s second DUI in 2010 and his most recent. Given that much less time elapsed between the latest one and the close of the record, and given that Applicant remains on probation, we find no reason to disturb the challenged conclusion. Adverse decision affirmed.

CASENO: 16-01390.a1

DATE: 09/15/2017

DATE: September 15, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 16-01390
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**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 July 6, 2016, 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 July 13, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 served in the U.S. military from 1998 to 2007, rising to the grade of E-5. He held a clearance while in the Navy and has held one for most of the time since he was discharged. Applicant has a master's degree. Applicant began consuming alcohol when he was in the Navy. While attending college, his consumption decreased to three or four times a year. Applicant has had three arrests for DUI, each of which resulted in conviction. The first two occurred in 2010 and the last in 2015. Following the second DUI in 2010, Applicant was required to complete a 30-hour online alcohol education course. As a result of the 2015 incident Applicant attended a DUI Risk Reduction Program and a Victim Impact Panel. He also completed a clinical substance abuse evaluation. The clinician did not give Applicant a diagnosis nor recommend substance abuse treatment. Applicant stopped drinking after each of the two incidents in 2010 but subsequently resumed. He currently drinks beer two or three times a month and occasionally consumes whiskey. He has had no further incidents since 2015.

### **The Judge's Analysis**

The Judge stated that Applicant has a record of abusing alcohol from 2010 through 2015. She concluded that enough time has not passed since the third incident to establish mitigation. She concluded that Applicant has not demonstrated a pattern of responsible alcohol consumption. She stated that Applicant's good work record does not outweigh evidence that, as of the close of the record, Applicant was still on probation. In the whole-person analysis, the Judge characterized Applicant as "credible, intelligent, and educated." Decision at 8. She noted that he has held a clearance for many years and that he candidly admitted his DUIs. On the other hand she cited to evidence that Applicant remains on probation until mid-2018.

### **Discussion**

Applicant challenges the Judge's conclusion that his last offense is too recent to establish mitigation. The Directive does not prescribe a defined period of abstinence or good behavior for alcohol offenses. Rather, each case must be evaluated upon its own merits. Directive, Encl. 2, App. A ¶ 2(b). In the case before us, several years elapsed between Applicant's second DUI in 2010 and his most recent. Given that much less time elapsed between the latest one and the close of the record, and given that Applicant remains on probation, we find no reason to disturb the challenged conclusion.

Applicant argues that the Judge erred in finding that he drinks beer three times a month and occasionally drinks whiskey. He states that this is a maximum amount of alcohol consumption and

that he often drinks less or not at all. We agree with Applicant that in his testimony and his interrogatory answers he stated that he does not necessarily drink this much each month. Tr. at 48; Government Exhibit 2, Answers to Interrogatories, at 6. However, given the totality of the evidence, we conclude that even if the Judge had qualified her finding as Applicant urges on appeal she would still have issued an adverse decision. To the extent that the Judge erred in this finding, it was harmless. The Judge's material findings of security concern are sustainable.

Applicant contends that the Judge did not properly apply the whole-person concept. He notes that the Judge described him as credible but nonetheless rendered an adverse decision. Applicant contends, in effect, that the Judge's analysis is not consistent. He argues that the whole-person factors cited in the Directive, if properly applied, would put him in a favorable light. On the first point, it is not inconsistent for a Judge to conclude that an applicant is credible but nevertheless has failed to meet his or her burden of persuasion. *See, e.g.*, ISCR Case No. 14-01669 at 3-4 (App. Bd. Jan. 29, 2015). Applicant argues, in effect, that the Judge extended insufficient weight to the favorable evidence in the record. However, an ability to argue for a different interpretation of the record is not enough 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. 15-08842 at 3 (App. Bd. Feb. 14, 2017). We conclude that the Judge's whole-person analysis is sustainable, in that she took into account all aspects of the record evidence which bore upon Applicant's reliability. *See, e.g.*, ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan  
Administrative Judge  
Chairperson, 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