

KEYWORD: Guideline G; Guideline J; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 16-01684.a1

DATE: 08/09/2017

DATE: August 9, 2017

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In Re:)	
)	
-----)	ISCR Case No. 16-01684
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 13, 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 J (Criminal Conduct), and Guideline E (Personal Conduct)¹ of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On May 9, 2017, after conducting a hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

¹The Judge withdrew the Guideline E allegation upon motion by Department Counsel. Decision at 2.

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 and Analysis

The Judge summarized her essential findings in the Analysis portion of her decision. She found that Applicant had been arrested for DUI in 2008. Although the charge was dismissed, Applicant went to an alcohol and drug safety course and his license was suspended. He was charged with DUI again in 2010 and convicted the following year. He was ordered to attend an alcohol safety course and to pay fines. In addition, his license was suspended. Applicant was diagnosed with alcohol abuse. In 2015, Applicant's car struck another one, and he received his third DUI charge, as a consequence of which he was sentenced to five days in jail, a fine, and attendance at an alcohol safety course.

The Judge stated that Applicant was 27 at the time of his first arrest, so that his offenses could not plausibly be attributed to youthful indiscretion. She noted that it had been two years since his last incident. However, she also noted that by the date of her decision it was only a few months since Applicant was released from probation. She stated that each time he was arrested or convicted he had an opportunity to learn but failed to do so. She stated that, given the number of his offenses, his having attended alcohol safety courses several times, and his continued consumption of alcohol, the two years since his last offense are not enough to show that Applicant's security-significant conduct is behind him.

Discussion

Applicant cites to matters that, he believes, the Judge did not consider, such as his having held a clearance for many years without incident or concern, his evidence that he consumes alcohol only rarely, the family problems that he was undergoing in 2015, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). We give due consideration to the Hearing Office cases that Applicant cites in his Appeal Brief. They are not sufficient to show undermine the Judge's adverse findings. In any event, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.,* ISCR Case No. 15-01416 at 3 (App. Bd. Feb. 15, 2017).

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