

KEYWORD: Guideline G; Guideline J

DIGEST: Applicant cites to some Hearing Office cases that he believes support his effort to obtain a clearance. We give these cases due consideration as persuasive authority. However, each case must be decided on its own merits. Moreover, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASENO: 16-03219.a1

DATE: 11/15/2017

DATE: November 15, 2017

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In Re:)	
)	
-----)	ISCR Case No. 16-03219
)	
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 November 21, 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 August 30, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the followings 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 has worked for a Defense contractor since late 2013. He retired from the U.S. military earlier that year. During his military career he deployed to the Middle East. Applicant was charged with Driving Under the Influence (DUI) on four occasions from early 1998 to mid-2015. Three of the occasions were during his military service. Applicant was required more than once to attend his service's alcohol treatment program and, after his latest DUI while on active duty, he received nonjudicial punishment that reduced him from an E-7 to E-6, the grade at which he retired. His 2015 DUI resulted in a plea of guilty that resulted in a fine, probation, attendance at a DUI school, and installation of an interlock device on his car.

Applicant continues to drink and become intoxicated. The last time he was drunk was Christmas 2016. He does not believe that he has an alcohol problem, and there is no evidence that he has received a diagnosis. Applicant enjoys an excellent reputation for honesty, loyalty, and trustworthiness. His character references recommend that he receive a clearance.

The Judge's Analysis

The Judge stated that Applicant's alcohol-related offenses were not infrequent, and he noted evidence that Applicant continues to drink to the point of intoxication. He cited to a paucity of evidence regarding the nature and substance of Applicant's alcohol classes. He also stated that Applicant's offenses in the military, with required class attendance, should have put him on notice that he needed to change his behavior, yet he failed to do so. The Judge concluded that Applicant has shown a pattern of criminal conduct. He stated that he could not conclude that Applicant had put such conduct behind him. Though citing to Applicant's good military record and character evidence, the Judge concluded that Applicant's security concerns were not mitigated.

Discussion

Applicant cites to various pieces of record evidence that he believes the Judge either did not consider or that he mis-weighed. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither 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. 15-08711 at 3 (App. Bd. Aug. 24, 2017). Applicant cites to some Hearing Office cases that he believes support his effort to obtain a clearance. We give these cases due consideration as persuasive authority. However, each case must be decided on its own merits. Moreover, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.,* ISCR Case No. 16-01941 at 2 (App. Bd. Aug. 9, 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: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board