

KEYWORD: Guideline G; Guideline J; Guideline E

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

CASE NO: 15-06868.a1

DATE: 02/16/2017

DATE: February 16, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 15-06868
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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 April 19, 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 18, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant has worked for a Defense contractor since 2010. He served on active duty from 1993 to 1996 and in the National Guard since then. He holds the pay grade of E-7. Applicant is divorced and has no children.

Applicant has been arrested and/or convicted of DWI/DUI several times since 1995, when he operated his car with a .19% blood alcohol level, crashing into a tree stump. Two years later, he drove off a freeway after drinking about 8 beers. His penalty included 36 months probation, a fine, and mandatory attendance in alcohol classes. In 2001, Applicant was again arrested for DUI. Although he testified that he had drunk only two beers, in a 2006 interview he stated that the number was four or five. Ultimately this charge was dismissed pursuant to a plea bargain.

In December 2011, Applicant was again charged with DUI. He had consumed about six beers and felt sleepy as he was driving his car along a freeway. Upon investigating, the police administered a field sobriety test, which Applicant failed. He was sentenced to a fine, attendance at an alcohol class, and 36 months probation. Applicant was arrested yet again for DUI in August 2012. After consuming about six beers, he hit a parked car with his own car and fled the scene. He was still on probation for this offense at the close of the record.

Applicant attended alcohol counseling from July 2013 until February 2015, completing 52 group sessions. He stated that he did not receive a diagnosis. Applicant drinks about four to five beers a week and stated that he barely consumes alcohol. He testified that he drinks much less than he did during the pendency of his divorce.

A character reference corroborated that Applicant had gone through a difficult divorce and was "on a path to success." Decision at 4. Applicant has had no security violations. In addition, the Judge also found that some of the SOR allegations of DUI were merely repeats of the incidents.

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

As noted above, the Judge resolved all of the Guideline E allegations in Applicant's favor. However, she resolved the Guidelines G and J allegations against him. She cited to Applicant's history of alcohol abuse and his continued drinking, and she concluded that the four years that have passed since Applicant's last incident are not enough to show that his judgment is sound. She also noted that Applicant is not participating in any sort of treatment program. Regarding Guideline J, the Judge stated that Applicant had failed to present evidence of rehabilitation. In the whole-person analysis, the Judge cited to Applicant's character reference, but she concluded that his extensive prior misconduct and his continued consumption of alcohol militate against a determination that his security-significant conduct is behind him.

## Discussion

Applicant draws our attention to various aspects of the record that he believes are favorable to him, such as the length of time since his last offense, evidence that his probationary status is to ensure payment of his fines after which he can ask for it to be removed, the effect that his marital problems had on his drinking, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). Neither is his argument enough to show that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information 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