

KEYWORD: Guideline G; Guideline J

DIGEST: Applicant argues that the Judge did not consider all of the record evidence and mis-weighed the evidence. In his decision, the Judge set forth detailed findings of fact and analyzed the pertinent disqualifying and mitigating conditions. Applicant’s arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-07422.a1

DATE: 03/15/2018

DATE: March 15, 2018

)	
In Re:)	
-----)	ISCR Case No. 15-07422
)	
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 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 November 28, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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

In 2010, Applicant was charged with driving under the influence (DUI), possession of marijuana, and underage possession of alcohol. This incident involved a traffic accident in which Applicant was in a coma for a week. For various financial reasons, he decided to plead guilty to reckless driving, a lesser included offense of DUI, and the other charges were dismissed.¹

In 2014, Applicant was charged with driving while intoxicated (DWI). His blood alcohol content was .15%. He was placed on probation for one year, had his driver's license suspended for one year, and was required to attend a safety program. Following this incident, he declared that he has no intention of drinking and driving in the future.

In late 2016, Applicant was charged with DUI, second offense in five years. He served 25 days in jail and was placed on probation for three years. His only recollection of this incident was having dinner at a restaurant and ordering a beer.

Applicant maintains his latest DUI incident was the last time he consumed alcohol. He acknowledges that he has an alcohol problem and does not intend to drink again. In mid-2017, he successfully completed an intensive outpatient treatment program, and his case manager wrote he "seems to exhibit no symptoms of active use and has tested negative for all substances." Decision at 4. He has participated in Alcoholics Anonymous (AA) meetings, but does not have a sponsor and has not started the 12-step program. He is considered to be a dedicated employee with a strong moral character. He received excellent performance ratings in 2015 and 2016.

The Judge's Analysis

Applicant's claim about the amount of alcohol he consumed before his 2010 incident lacks credibility. He remains on probation for his DUI in 2016. He acknowledges that he has an alcohol problem. While he has successfully completed court-ordered treatment, more time must pass without alcohol-related criminal conduct to conclude Applicant's present sobriety will continue.

Discussion

Applicant argues that the Judge did not consider all of the record evidence and mis-weighed

¹ The SOR alleged that Applicant was charged with shoplifting in 1999. The Judge found in favor of Applicant on that allegation, and it is not an issue on appeal.

the evidence. In his decision, the Judge set forth detailed findings of fact and analyzed the pertinent disqualifying and mitigating conditions. Applicant's arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017).

Applicant indicated that he was citing two hearing-level decisions that would be "helpful" in deciding this case. Appeal Brief at 9-10. The first cited decision, however, was an Appeal Board decision in which the applicant's unfavorable clearance decision under Guideline G was affirmed on appeal. The second cited decision was not a Guideline G case as is this case, but was a Guideline H (Drug Involvement and Substance Misuse) case. The mitigating factors of Guideline H are tailored to the security concerns arising from drug involvement. We conclude the cases cited by Applicant are distinguishable and not persuasive to the facts of this case.

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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board