

KEYWORD: Guideline F; Guideline G; Guideline J

DIGEST: The Judge stated that Applicant was a problem drinker who exercised poor judgment while under the influence of alcohol. He stated that Applicant's separate incidents of DUI cannot be viewed in isolation because they appear to be part of a larger pattern of drinking and driving. Adverse decision affirmed.

CASENO: 16-01492.a1

DATE: 03/20/2018

DATE: March 20, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-01492
)	
Applicant for Security Clearance)	
)	

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 September 20, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel subsequently amended the SOR to raise concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). Applicant requested a hearing. On December 15, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

The Judge made the following findings pertinent to the issues raised on appeal: Applicant works for a Federal contractor and seeks to retain a previously granted security clearance. In 2007 he was arrested and charged with two counts of Driving Under the Influence (DUI). Applicant pled guilty to reckless driving, and the DUI charges were dropped. He was arrested again in December 2016 and charged with two counts of DUI and with speeding. The case was ongoing as of the close of the record, although Applicant testified that he made a foolish mistake by speeding after having consumed alcohol. Applicant’s character references describe him as trustworthy, dependable, honest, and hard-working.

The Judge stated that Applicant was a problem drinker who exercised poor judgment while under the influence of alcohol. He stated that Applicant’s separate incidents of DUI cannot be viewed in isolation because they appear to be part of a larger pattern of drinking and driving. He characterized Applicant as contrite during the hearing and willing to accept responsibility. However, the Judge concluded that additional time was needed before it could be determined that Applicant’s security-significant conduct is behind him.

Discussion

Applicant contends that the Judge erred by denying him a clearance based on two incidents that were several years apart. He states that he duly reported his recent misconduct to his employer and to his facility security officer. He does not consider himself to be a problem drinker. However, Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence, nor 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. 17-00257 at 3 (App. Bd. Dec. 7, 2017). We conclude that the Judge satisfied the requirements of the Directive insofar as he

evaluated the record as a cumulative whole. *See, e.g.*, ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 14, 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