



The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 18, 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 decision on the written record. On January 11, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 SOR alleged that Applicant was arrested for driving under the influence of alcohol (DUI) in 1991, 2012, and 2014 and was sentenced after pleading no contest to each of those charges. It also alleges that he was issued a letter of reprimand after he was found under the influence of alcohol at work in 2013. In his Answer to the SOR, he admitted each of the SOR allegations. He remains on probation until 2019. In the decision, the Judge made detailed findings of fact about Applicant’s history of alcohol consumption, including his diagnosis of alcohol dependency during inpatient alcohol treatment in 2003 and his subsequent participation in other alcohol treatment programs in 2005, 2008, 2012-2013, and 2014-2015. In his analysis, the Judge noted that little is known about whether Applicant has abused alcohol since 2015. The Judge concluded the security concerns under Guidelines G and J were not mitigated.

In his appeal brief, Applicant noted the Judge’s conclusion that little is known about Applicant’s alcohol consumption since 2015 and provided a statement from a psychologist that is dated after the Judge’s decision. The psychologist’s statement constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.19.

Applicant also claims the Judge erred in finding that he was seated in a car prior to his 1991 arrest; that he had a stepdaughter from his first marriage instead of his second marriage; that he held a security clearance from 2010 instead of 1987; and that he reported his DUI to his employer in March 2015 instead of October 2014. Even if the Judge erred in making those challenged findings, such errors were harmless because they likely did not affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). Applicant has not challenged any of the Judge’s material findings regarding the alleged security concerns.

The balance of Applicant’s arguments amounts to a disagreement with the Judge’s weighing of the evidence.<sup>1</sup> His arguments, however, are not sufficient to show that the Judge weighed the

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<sup>1</sup> Applicant also asserts the Appeal Board erred in calculating the 45-day period he had for submission of his appeal brief. We note that 45-day period runs from the date of the Judge’s decision (Directive ¶ E3.1.30) and not, as he asserts, from the date he received an Appeal Board letter acknowledging receipt of his Notice of Appeal.

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).

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