

KEYWORD: Guideline G; Guideline J

DIGEST: Applicant’s arguments for a “piecemeal analysis” of the evidence are not persuasive. Applicant has not identified any harmful error likely to change the outcome of this case. Adverse decision affirmed.

CASE NO: 16-02069.a1

DATE: 01/11/2018

DATE: January 11, 2018

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In Re: )	
) )	
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) )	
Applicant for Security Clearance )	
_____ )	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

F. Dean Morgan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 7, 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 October 3, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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**

Applicant, who is 69 years old, was cited or arrested for five alcohol-related driving charges between 1981 and 2015. Military authorities resolved the first incident by suspending his driver's licence and directing him to attend alcohol awareness classes. In 1987, he was stopped for erratic driving and had a blood-alcohol content (BAC) of .193%. He pled guilty to a related drinking and driving charge, spent 24 hours in jail, and was sentenced to outpatient counseling.

In 1991, Applicant was cited for driving under the influence (DUI). After pleading guilty to DUI, he was given a disposition of probation before judgment and was ordered to attend outpatient counseling. In 1992, he told investigators that he no longer drove after consuming alcohol. After driving his car into a tree in 2010, Applicant was found guilty of DUI and was sentenced to 12 months of probation. In 2015, Applicant was stopped for crossing driving lanes and a blood test revealed he had a BAC of .116%. He was found guilty of DUI and given an accelerated rehabilitative disposition. He was sentenced to a period of incarceration and is appealing the decision on a technicality.

Applicant continues to consume alcohol periodically, usually at home. He has not had any adverse alcohol-related incidents since 2015 and states he has not been intoxicated since then. "Despite his most recent DUI, Applicant feels that, in the past 10 years, he has not been so intoxicated that he did not know what he was doing." Decision at 3.

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

Applicant has a troubled history of driving while intoxicated. His most recent citation was two years ago and is still pending resolution. He continues to drink alcohol and, while he states he does not drink and drive, he made a similar claim in 1992. Finding against Applicant on all of the SOR allegations, the Judge concluded that none of the available mitigating conditions applied.

### **Discussion**

In his appeal brief, Applicant addresses each of the alcohol-related driving incidents by highlighting facts favorable to him and arguing the security concerns arising from each incident are mitigated for various reasons. For example, he raises arguments about the legal sufficiency of his arrest in 2015, but does not specifically dispute the underlying facts that he drove a vehicle with a BAC of .116% on that occasion. Overall, his arguments are not persuasive. In essence, he is advocating for a "piecemeal analysis" of the evidence, which the Appeal Board has long discounted as an inappropriate way to analyze the evidence. When weighing the evidence, the Judge must consider the evidence as a whole and not view it in an isolated and piecemeal fashion. *See, e.g.,* ISCR Case No. 02-11489 at 4 (App. Bd. Sep. 11, 2003). *See also, Raffone v. Adams*, 468 F. 2d 860, 866 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when

each event is viewed in isolation). In this case, the Judge properly considered the evidence in its entirety in analyzing the security significance of Applicant's alleged misconduct.

Applicant also challenges the Judge's weighing of the evidence and his whole-person analysis. In his arguments, Applicant emphasizes such matters as his military service, his compliance with court orders, and his completion of all assigned alcohol counseling. The presence of some mitigating evidence, however, does not compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016). Applicant has not identified any harmful error likely to change the outcome of this case.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. "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." The decision is sustainable on this record.

**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