

KEYWORD: Guideline G

DIGEST: The ultimate resolution of a case does not necessarily turn on whether one or more of the disqualifying or mitigating conditions applies, in whole or in part, to the facts of the case. By the same token, security concerns do not arise simply by virtue of the proportionate number of disqualifying conditions that a Judge might find relevant. Adverse decision affirmed.

CASENO: 16-02592.a1

DATE: 01/31/2018

DATE: January 31, 2018

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In Re:)	
)	
-----)	ISCR Case No. 16-02592
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)	
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 November 4, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 18, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 retired from the military in 1995 and has worked for contractors since. His current employment began in 2003. He has held a security clearance for over 40 years. His SOR lists four incidents of drunk driving that occurred from 1978 until 2013. On the last occasion, Applicant had consumed alcohol while watching a football game. A policeman stopped him for erratic driving. A breath analysis showed that Applicant’s blood alcohol level was .18. These incidents were met by penalties of increasing severity. The one from 2013 resulted in a jail sentence, two years of probation, twelve weeks of alcohol counseling, and attendance at a drunk driving impact panel. He was ordered to attend alcoholics anonymous (AA) while on probation and to abstain from alcohol. He completed the terms of his probation in 2016 but then resumed drinking. He stopped attending AA after he completed his probation.

Applicant’s facility security officer (FSO) testified that he had informed her of his drunk driving incidents. She testified that she found him to be reliable and trustworthy. She also stated that Applicant’s employer would be willing to implement any conditions that the Government imposed, including random alcohol screening and submitting regular reports.

The Judge’s Analysis

The Judge noted Applicant’s four drunk driving offenses, along with his penalties and the treatment and counseling that he has received. However, he stated that Applicant had not altered his behavior and that he continues to drive after having consumed alcohol. The Judge acknowledged Applicant’s many years of military service as well as his service to the U.S. as a contractor and that he had reported his offenses. However, the Judge cited to Applicant’s admission that he continues to drive after having consumed alcohol. The Judge concluded that Applicant does not yet fully appreciate the significance of his misconduct and has not sufficiently reformed so as to warrant a favorable result in this adjudication.

Discussion

Applicant's brief includes reference to a substantial amount of information that he did not submit previously and that is not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant takes issue with the Judge's statement that he continues to drink and drive. He contends that it makes him sound as if he drank and drove daily and is therefore misleading. The challenged finding is based upon Applicant's hearing testimony, in which he stated that as recently as the week preceding the hearing he had driven his vehicle after having consumed two beers and that he had continued to drink and get behind the wheel of a car after having been told not to at the victim impact panel. Tr. at 25, 29-30. The Judge's findings, viewed as a whole, do not suggest that he improperly magnified Applicant's misconduct or otherwise viewed the evidence as more egregious than it actually is. The Judge's material findings are based upon substantial evidence of constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 14-04724 at 3 (App. Bd. Aug. 18, 2017).

Applicant notes that the Judge cited to the Guideline G security concern and found that two disqualifying conditions apply to his circumstances. He argues that these two conditions are only a small part of the total number of disqualifying conditions listed in the Directive under all of the Guidelines. He argues that the Judge should have ruled in his favor in the whole-person analysis on the view that the great number of conditions that were not raised suggests that his record, on the whole, does not present security concerns. Applicant also contends that the Judge found his misconduct to be "literally disqualifying," regardless of all of the positive evidence in the record.

The ultimate resolution of a case does not necessarily turn on whether one or more of the disqualifying or mitigating conditions applies, in whole or in part, to the facts of the case. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). By the same token, security concerns do not arise simply by virtue of the proportionate number of disqualifying conditions that a Judge might find relevant. The purpose of a DOHA adjudication is to see if the applicant has engaged in conduct or undergone circumstances that suggest that he might be lacking in judgment or otherwise unable to meet the requirements of holding a clearance.

In the case before us, Applicant's four DUIs and his acknowledgment that he continues to drive after having consumed alcohol support the Judge's overall adverse holding. A person who, by his own admission, continues to drink and drive despite four previous DUIs may well be lacking in the judgment and reliability expected of those who have access to national secrets. We find no reason to disturb the Judge's handling of the disqualifying conditions. Neither do we find error in the Judge's whole-person analysis. *See, e.g.*, ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 14, 2017). Contrary to Applicant's argument, the Judge analyzed Applicant's security-significant conduct in light of the record as a whole. Applicant's references to his favorable evidence, such as his service to the nation in the military and later as a contractor, are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 16-03219 at 2 (App. Bd. Nov.15, 2017).

Applicant states the following: "I do not anticipate a personal representative to accompany me at this appeal." Appeal Brief at 2. To the extent that he expects that there may be some other

proceeding in his case, such as a personal appearance before us, the Directive provides that the Appeal Board bases its decisions on the briefs of the parties and on the record. Directive ¶¶ E3.1.28-32. There is no provision for oral argument or other in-person meeting between an applicant and members of the Appeal Board. *See, e.g.*, ISCR Case No. 09-01321 at 2 (App. Bd. Feb. 17, 2010).

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