

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 9, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding that Applicant’s omissions in a security clearance application (SCA) were deliberate and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant works for a Defense contractor, a job he has held since 2006. He was worked for other contractors since 2002. Applicant served in the military from 1996 until his honorable discharge in early 2000.

Applicant was arrested in the 1990s, once for possession of marijuana, once for possession of drug use paraphernalia, and once for both possession of marijuana and of drug use paraphernalia. Applicant has been charged with numerous alcohol-related offenses, including two instances of DWI/DUI, public drunkenness, drunk and disorderly conduct, etc.¹ His drunk and disorderly offenses occurred while he was in the military, for which he received non-judicial punishment.² Applicant was variously required to attend alcohol counseling classes and a DWI class.

In 2004, Applicant was denied a security clearance because of drug involvement, alcohol consumption, and falsifying his SCA. In addressing the falsifications during a DOHA adjudication, Applicant stated that he completed his SCA hurriedly, that he did not take the process seriously, and that he had been young and inexperienced.

In 2015, Applicant did not disclose the full extent of his drug and alcohol offenses in his SCA. The Judge found that, during his subsequent clearance interview, the investigator repeatedly had to confront Applicant with his various arrests and charges before he admitted to them. Applicant stated that his 2015 omissions were due to a belief that his earlier misconduct had been “pre-loaded” into the SCA and that he need not explicitly mention it. However, the Judge found that

¹The SOR also alleged Applicant’s 2015 failure of a workplace drug test. The Judge ultimately concluded that the circumstances surrounding this test were problematic and resolved this allegation in Applicant’s favor.

²Applicant’s drug and alcohol related offenses were cross alleged under Guideline J.

Applicant did disclose counseling associated with a DUI that occurred years earlier, which was not consistent with a belief that his earlier concerns were somehow already contained in his SCA.

Applicant stated that he no longer associates with persons who drank to excess and that he lives quietly and is sober. Applicant has received several laudatory comments about his work performance, reliability, and trustworthiness.

The Judge's Analysis

The Judge concluded that Applicant's claims of sobriety and a changed lifestyle were not sufficient to mitigate the concerns arising from his years of alcohol infractions. He stated that Applicant had not demonstrated a sustained and verifiable effort to resolve his difficulties with alcohol. Concerning his SCA omissions, the Judge noted that Applicant had previously been denied a clearance due, in part, to deliberate omissions from his SCA. He observed that, during his earlier DOHA proceeding, Applicant claimed that he did not take the process seriously. He stated that he did not find Applicant's explanation that he thought his 2015 answers were "pre-loaded" to be credible. The Judge stated that Applicant never attempted to correct his false statements, and even when provided an opportunity during his clearance interview he denied his misconduct until his investigator prodded him into candor. The Judge concluded that the record as a whole left him with doubts about Applicant's eligibility for a security clearance, which required an adverse decision.

Discussion

Applicant challenges the Judge's finding that he had deliberately falsified his SCA. He argues that the record supports a conclusion that he believed that the only matter under concern was his recent failed drug test and that his earlier misconduct did not need to be disclosed. He argues that the Judge misinterpreted the summary of his clearance investigation. We examine a Judge's findings to see if they are supported by substantial evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018). We have examined this issue in light of the entirety of the record. The Judge's interpretation of the interview summary is reasonable. Given Applicant's prior clearance denial for falsifying his SCA, the clarity of the questions at issue, and the Judge's adverse credibility determination, to which we are required to give deference,³ we conclude that the challenged finding is sustainable. Even if we concluded that there was an error, it would be harmless, in that it did not likely affect the outcome of the case. *See, e.g.*, ISCR case No. 17-00936 at 5 (App. Bd. Oct 25, 2018).

The balance of Applicant's brief is, in essence, a challenge to the Judge's weighing of the evidence. 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. *Id.*

³Directive ¶ E3.1.32.1.

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