KEYWORD: Guideline E; Guideline G; Guideline J

DIGEST: Although Item 7 is indeed hearsay, such evidence is generally admissible in administrative hearings. Adverse decision affirmed.

CASENO: 17-01588.a1

DATE: 08/07/2018

DATE: August 7, 2018

In Re:	)	
----------	)	ISCR Case No. 17-01588
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 July 31, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 30, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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's findings of fact contained errors and 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 and Analysis

The Judge found that Applicant was arrested and convicted of DWI in 2009. He paid a fine, court costs, and attended an alcohol education program. Two years later, a court issued a Domestic Violence Protective order against Applicant after he assaulted the mother of his son. He had consumed alcohol prior to the incident. In late 2016, Applicant was arrested for DUI. He was subsequently convicted and sentenced to two years probation, which will not expire until March 2019. These offenses were alleged in the SOR. In addition, the Judge found that Applicant had gone to trial in late 2016 for a another alcohol-related assault against the same victim, an incident not alleged in the SOR. This information was disclosed during Applicant's clearance interview. The Judge stated that she was considering it in evaluating Applicant's case for mitigation, his credibility, and the whole-person factors. The Judge noted that Applicant's last alleged misconduct occurred after he had submitted his security clearance application. She concluded that Applicant had not presented sufficient evidence of rehabilitation or modified behavior. She concluded that insufficient time has passed to establish that Applicant's security-significant conduct is behind him.

Discussion

Applicant's brief includes matters that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant contends that the Judge erred in finding that he had committed the offense that resulted in the protective order. He reiterates claims that he made in his response to the SOR that the victim had fabricated the charges in order to gain custody of their son. He argues that the evidence in support of this finding is merely hearsay.

The Judge's findings on this matter are based upon the factual statements in the Petition from Domestic Violence filed against Applicant by the victim. The statements are detailed, signed by the victim, and were subsequently found by the court to constitute clear and convincing evidence of the offense. Petition and Final Order, contained in Item 7. The challenged findings are based upon "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, e.g.,* ISCR Case

No. 16-04094 at 2 (App. Bd. Apr. 20, 2018). Although Item 7 is indeed hearsay, such evidence is generally admissible in administrative hearings. *See, e.g.*, ISCR Case No. 15-02859 at 3 (App. Bd. Jun. 23, 2017). Item 7 consists of court documents that constitute official records admissible under Directive ¶ E3.1.20 despite their hearsay character. The balance of Applicant's brief is a challenge to the Judge's weighing of the evidence. His arguments are not enough 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. 16-04094, *supra*, at 3.

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