

KEYWORD: Guideline F; Guideline G; Guideline J

DIGEST: Applicant asserts in a footnote that he provided an updated credit report that was not referenced in the decision. Applicant does not state what the date of the credit report was nor when it was submitted. No such credit report appears in the case file. We conclude that Applicant’s assertion lacks sufficient specificity to justify remanding the case to determine if there was an error at DOHA. Furthermore, we note that given the Judge’s adverse conclusions under Guideline G and J, no useful purpose would be served by such a remand. Adverse decision affirmed.

CASENO: 17-01694.a1

DATE: 08/16/2018

DATE: August 16, 2018

In Re:

Applicant for Security Clearance

ISCR Case No. 17-01694

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

P. Todd Sartwell, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 13, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), 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 May 7, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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 served in the military from 1993 to 2002 and spent most of his career following his discharge in the Defense industry. He held a clearance during the course of his military career. He experienced a few months of unemployment from mid to late 2015, prior to taking his current position.

Applicant began drinking in high school. In late 1992, and again in early 1993, he was charged with underage consumption of alcohol, among other things. On the first occasion he paid a fine and on the second the charges were dismissed after Applicant attended an alcohol treatment program. During that program, Applicant was diagnosed with alcohol abuse. While in the military, he completed an alcohol treatment program, in light of his “history of alcohol abuse.” Decision at 3.

In 2014, Applicant was charged with DWI. He received a suspended sentence to jail, a fine, 12 months of probation, and a requirement to attend an alcohol safety program. In 2016, he was again charged with DWI and with refusing a breathalyzer, following an argument with his wife. He pled guilty to DWI and was sentenced to 20 days in jail (credit for time served), 4 weeks of alcohol safety classes, a \$1,000 fine, and 20 sessions of alcoholics anonymous. He was also placed on 4 years of unsupervised probation. He claims that he completed all of his court requirements and has a restricted drivers license, although he provided no corroboration. He remains on probation until 2020.

Applicant’s SCA lists numerous delinquent debts, a past-due mortgage account, a charged-off vehicle, and some small medical debts. He also filed for Chapter 13 bankruptcy protection in 2013 on the advice of his attorney, as a tactic to get a loan modification regarding his mortgage. He was not successful, and the bankruptcy petition was dismissed. Applicant attributed his financial problems to a contentious divorce. He states that he has no further obligation on the mortgage loan because it has been written off. He has taken no action to resolve the automobile debt, and he provided no corroboration for his claim to have resolved the medical debts.

The Judge’s Analysis

The Judge cited to Applicant’s “long history of drinking alcohol to excess and to the point of intoxication.” *Id.* at 6. He also noted Applicant’s diagnosis of alcohol abuse and his legal troubles attendant upon alcohol consumption. He observed that Applicant was still on probation as of the close of the record. The Judge concluded that, despite the age of the earlier infractions, Applicant’s conduct is recent and that his pattern of alcohol issues has not been mitigated.

Concerning Guideline F, the Judge stated that Applicant’s financial problems were attributable to his marital problems and to unemployment, which were circumstances beyond his control. He concluded, however, that Applicant had not demonstrated responsible action in regard to his debts. The Judge cited to evidence that the largest debts—the mortgage and the automobile loan—had been charged off, which is not the same as payment.

Discussion

Applicant’s brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He argues that his security-significant conduct and circumstances all resulted from his marital breakup and that, on the whole, both in the military and as a civilian, he has shown himself to be trustworthy. He cites to the age of the earlier two alcohol infractions as a reason to conclude that they do not raise security concerns and to his evidence that he has completed all of his court-ordered requirements. Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence, which is 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. 17-01181 at 4 (App. Bd. Apr. 30, 2018).

We note that Applicant asserts in a footnote that he provided an updated credit report that was not referenced in the decision. Applicant does not state what the date of the credit report was nor when it was submitted. No such credit report appears in the case file. We conclude that Applicant’s assertion lacks sufficient specificity to justify remanding the case to determine if there was an error at DOHA. Furthermore, we note that given the Judge’s adverse conclusions under Guideline G and J, no useful purpose would be served by such a remand.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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 Decisions 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