

KEYWORD: Guideline E; Guideline G

DIGEST: Applicant contends the Judge’s decision is in error because all of his alcohol incidents are in the past and he no longer consumes alcohol. He also argues that the honesty concerns under Guideline E were caused by his “alcohol consumption addiction” and are no longer a concern because he is now cured of his “alcohol disease.” In essence, Applicant is advocating for an alternative weighing of the evidence. An applicant’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. Adverse decision affirmed.

CASENO: 17-03900.a1

DATE: 10/26/2018

DATE: October 26, 2018

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| In Re:                           | ) |                        |
| -----                            | ) |                        |
|                                  | ) | ISCR Case No. 17-03900 |
|                                  | ) |                        |
| 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 March 5, 2018, 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 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 August 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Bayard Glendon 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 and Analysis**

Between 2008 and 2014, Applicant was arrested three times for driving while intoxicated (DWI). After his first DWI conviction in 2008, he vowed he would never drink again. Following his second DWI arrest in 2012, he pled guilty to the lesser charges of reckless driving. In 2015, he was convicted of the third DWI offense and served 10 days in jail with the remaining five months and 20 days of his jail sentence suspended. In a security clearance application (SCA) submitted in 2016, he did not disclose that he was ever charged with any offense involving alcohol. In a background interview in 2017, he told the interviewer that he had no recollection of being arrested in 2014.

Applicant claims his last known use of alcohol occurred when he was arrested in 2014. He provided the names of three individuals who could vouch for his character and sobriety, but failed to provide statements from them. His uncorroborated claim of abstinence since 2014 is inadequate to establish sufficient time has passed since his last incident. His promise to not drink again in 2008 proved to be a commitment he could not keep. The Government proved by substantial evidence that Applicant intentionally falsified responses in his 2016 SCA.

### **Discussion**

In his appeal brief, Applicant provided statements from three individuals that were not previously submitted to the Judge for consideration. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends the Judge's decision is in error because all of his alcohol incidents are in the past and he no longer consumes alcohol. He also argues that the honesty concerns under Guideline E were caused by his "alcohol consumption addiction" and are no longer a concern because he is now cured of his "alcohol disease." Appeal Brief at 1. In essence, Applicant is advocating for an alternative weighing of the evidence. An applicant'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 failed to establish that the Judge committed any harmful error. 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