

KEYWORD: Guideline G

DIGEST: There was no error in the Judge finding that Applicant's resumed drinking, albeit moderate, is against clinical advice nor in her unfavorable conclusion which follow. Adverse decision affirmed.

CASENO: 04-10457.a1

DATE: 04/27/2007

DATE: April 27, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 04-10457
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

William E. McCoy, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 13, 2005, DOHA issued a statement of reasons 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 August 31, 2006, after the hearing, Administrative Judge Elizabeth M. Matchinski denied Applicant's request for a security clearance. Applicant submitted a timely appeal pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge did not give appropriate weight to evidence of Applicant's recent moderate use of alcohol; and whether the Judge's decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following sustainable findings of fact: Applicant began to drink alcohol upon entering the U.S. Navy in 1982. From that date until 1991, Applicant's alcohol consumption increased from infrequent to about three times a week, three to four beers at a time. In 1991 Applicant was assigned submarine duty and increased his drinking frequency up to 12 beers a day. In order to save his marriage, Applicant sought treatment. He was diagnosed as alcohol-dependent, completed a 30 day program and returned to duty. Remaining abstinent for 16 months, Applicant eventually began consuming beer once again.

By 1996, Applicant was again drinking as many as 12 beers a day. During Applicant's hospitalization for possible emotional problems, a clinical psychologist diagnosed him as suffering from alcohol dependence. In response to this diagnosis, Applicant abstained from alcohol and attended Alcoholics Anonymous (AA) twice a week, according to his own statement to his psychologist. Applicant was placed in an alcohol treatment program, receiving inpatient rehabilitation treatment at a military facility, which emphasized relapse prevention. While in treatment he attended AA at least seven times a week. Upon discharge, Applicant was recommended to attend at least five AA meetings a week, to abstain from alcohol, obtain an AA sponsor, and seek help for any personal or family problems that might impede his recovery.

Navy officials subsequently advised Applicant that, to remain on active duty with the Navy, he would be required to participate in an "aftercare" regimen. Applicant attended AA and was abstinent for about six to eight months, but relapsed "by choice." "By December 1997, he was drinking three or four 12-ounce beers per day . . ."

In 2001, the Defense Security Service (DSS) interviewed Applicant. He admitted to the interviewer that he was drinking, despite being directed by his command to abstain. He admitted to drinking one or two beers twice weekly and a glass of wine occasionally.

Applicant retired from the Navy in 2002. He obtained a job with a federal contractor, performing duties similar to those he did in the Navy. In 2003, Applicant was re-interviewed by a DSS agent. He told the agent that his current drinking pattern of three or four beers per day was not a problem and that he expected to continue drinking at that level.

In 2004, in response to DOHA interrogatories, Applicant admitted that he was still drinking, at the reduced level of one or two drinks a week. In December 2004, Applicant was evaluated, at DOHA's request, by a counselor at a military alcohol rehabilitation program. The counselor concluded that, assuming Applicant's information as to his reduced drinking levels was accurate, Applicant did not have a recent problem with alcohol abuse. Applicant states that he has not been drunk since some time in 2004, although he admitted that he consumed one and one-half beers the night prior to the hearing. Additionally, about a month before the hearing, he consumed four to six

beers while working in his yard. The Judge stated that, “He intends to continue to consume alcohol in the future despite concerns of his ex-spouse and mother that he is drinking too much.” Applicant’s drinking has not affected his work performance.

An examination of the Judge’s findings, as well as her analysis, demonstrates that she considered the fact that Applicant’s recent alcohol consumption has been moderate, characterizing it as “a positive change in his behavior.” Decision at 7. However, she also pointed out that even this reduced consumption is against clinical advice, which undermines the “ameliorative impact” of the various treatment programs he underwent. *Id.* We find no error in the manner in which the Judge weighed the evidence. *See* ISCR Case No. 03-16167 at 2 (App. Bd. Dec. 22, 2006). Given the Judge’s findings, we conclude that her decision is neither arbitrary, capricious, nor contrary to law. *See* ISCR Case No. 00-0382 (App. Bd. Jun. 19, 2001).

Order

The Judge’s decision denying Applicant a clearance is AFFIRMED.

Signed: Jeffrey D. Billett _____

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields _____

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board