

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 17, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under 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 December 13, 2007, after the hearing, Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process; whether certain of the Judge’s factual findings were not based upon substantial record evidence; whether the Judge erred in his rulings upon evidence; and whether the Judge was biased against Applicant. We further construe Applicant’s brief as alleging that the Judge’s adverse security clearance decision was arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge found that Applicant had twice been charged with DUI, each time pleading guilty to reckless driving. In addition, the Judge found that, about three years after the second DUI, Applicant caused a multi-car accident, with resulting injury, and left the scene. He turned himself in to the police several weeks later. Applicant did not report this incident to his employer’s security officer until several weeks later as well.

We have examined Applicant’s allegations of error in light of the record as a whole. Applicant has not met his “heavy burden of persuasion” that he was denied the due process rights secured by the Directive. ISCR Case No. 05-11641 at (App. Bd. Jul. 31, 2007). Specifically Applicant asserts the Judge relied unreasonably on uncharged misconduct. The conduct in question has to do with Applicant’s failure timely to report adverse information. The conduct is intimately linked to the allegations in the SOR and was reasonably before the Judge.

We conclude that the Judge’s material findings of security concern are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence 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 record.”) Applicant has not met his “heavy burden of persuasion” that the Judge acted in such a fashion as to cause a reasonable person to question his fairness, impartiality, or professionalism. ISCR Case No. 05-04923 at 2 (App. Bd. Apr. 24, 2007). Finally, viewed in the light of the record as a whole, the Judge has articulated “a satisfactory explanation for [his] conclusions, including a rational connection between the facts found” and his adverse decision, both as to the intentional nature of Applicant’s omission as well as the application of Guideline E and J mitigating conditions. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). The record supports the Judge’s conclusion that Applicant has not met his burden of persuasion that it is “clearly consistent with the national interest” for him to have a clearance. Decision at 11. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Board concludes that the Judge’s decision is not arbitrary, capricious, or contrary to law.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board