

KEYWORD: Guideline G; Guideline E

DIGEST: The Judge's findings are sustainable. The Judge's ultimate conclusions are also sustainable. Adverse decision affirmed.

CASENO: 06-12284.a1

DATE: 10/01/2007

DATE: October 1, 2007

In Re:)	
)	
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)	ISCR Case No. 06-12284
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 25, 2006, DOHA issued a statement of reasons 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 hearing. On March 29, 2007, after the hearing, Administrative Judge Mary E. Henry denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found that Applicant was first arrested for Driving While Intoxicated when he was 16 years old and in high school. Applicant was convicted and sentenced to community service. He lost his license for one year and had to attend alcohol education classes.

The Judge also found that in May 2004 Applicant and his girlfriend, following dinner and drinks at a local restaurant, got into a dispute with the staff over whether he had paid the bill, Applicant insisting that he had. The staff called the police. “Because he was upset about the accusation and the decision to call the police, he couldn’t keep his mouth shut. As a result, the police arrested him for disorderly conduct in a motor vehicle.” Applicant ultimately paid a fine.

In December 2005, Applicant and his fiancé attended a Christmas party, during which they consumed alcohol over several hours. After leaving the party, they went to a bar, where they got into an argument. During the trip home, they continued the argument, Applicant eventually stopping the car, pulling his fiancé out, and leaving her behind. Applicant was charged with criminal domestic violence. Applicant’s fiancé did not appear at trial, so the charges were dismissed.

In August 2006, Applicant was arrested and charged with Driving Under the Influence. Trial was delayed until some time after the hearing in Applicant’s security clearance case. Following this arrest, Applicant received outpatient substance abuse treatment.

In his appeal submission, Applicant contends that the Judge gave undue weight to the phrase “couldn’t keep his mouth shut.” Applicant believes that the entire incident arising out of the dispute in the restaurant was blown out of proportion. He contends that the Judge’s findings are in error to the extent that they attribute the August 2005 incident to alcohol consumption. We also construe Applicant’s brief as asserting that the Judge did not properly apply the whole-person factors in arriving at her decision.

We have examined the Judge’s findings in light of the record and conclude that those findings are sustainable. Furthermore, the record does not support a conclusion that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See* ISCR Case No. 05-04923 at 4 (App. Bd. Apr. 24, 2007). Neither does the record support a conclusion that the Judge erred in her whole-person analysis. *See* Directive ¶ E2.1.2. The whole person analysis supports the Judge’s ultimate conclusion denying Applicant a security clearance. *See* ISCR Case No. 04-11414 at 4 (App. Bd. Mar. 5, 2007).

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
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