

KEYWORD: Guideline G; Guideline E

DIGEST: Applicant challenges the Judge's statement that Applicant denies he has a problem with alcohol, relying on portions of his testimony and a cover letter. The Judge must consider Applicant's statement in light of the record as a whole. Adverse decision affirmed.

CASENO: 06-18998.a1

DATE: 11/09/2007

DATE: November 9, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-18998
)	
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 November 17, 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 June 21, 2007, after the hearing, Administrative Judge Michael H. Leonard denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. The Board affirms the Judge's decision.

As to Guideline G, the Judge's factual findings included the following: Applicant was arrested for Driving Under the Influence (DUI) four times—in 1971, 1984, 2000, and 2005. He was found guilty the first three times. After the arrest in 2005, the charge was dismissed because the arresting officer did not appear, but the state administratively revoked Applicant's driver's license for two years—until March 2008. Applicant has abstained from alcohol in the past, but currently consumes alcohol at a moderate to low level.¹

Applicant objects to the Judge's statement that Applicant does not believe he has a problem with alcohol. Applicant points to portions of his hearing testimony,² as well as a cover letter he submitted with evidence he was allowed to submit after the hearing, in which he acknowledged he had an alcohol problem. The Judge is not required, as a matter of law, to accept Applicant's testimony. Rather, the Judge has to consider Applicant's statements in light of the record evidence as a whole. *See, e.g.,* ISCR Case No. 99-0005 at 3 (App. Bd. Apr. 19, 2000). Moreover, during another part of his testimony,³ Applicant denies having a problem with alcohol. The Board finds no error on this issue.

Applicant contends that the Judge erred in not applying all of the Guideline G mitigating conditions to his case.⁴ “[T]here is a strong presumption against granting a security clearance.” *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive E3.1.15. The application of disqualifying and mitigation conditions does not turn simply on a finding that one or more of them apply to the particular facts of a case.

¹The Judge found in Applicant's favor regarding Guideline E. The findings under that Guideline are not in issue.

²Transcript at 131-132.

³Transcript at 65.

⁴Directive, Enclosure 2 ¶ 23: “(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the employee is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.”

See, e.g., ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). Even if the Judge had found some evidence of mitigation in this case, that alone would not have compelled the Judge to make a favorable security clearance decision. As the trier of fact, the Judge had to weigh the evidence as a whole and decide whether the favorable evidence outweighed the unfavorable, or *vice versa*. 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. 06-17691 at 3 (App. Bd. Jul. 19, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the recency and seriousness of the disqualifying conduct. The Judge considered the possible application of relevant mitigating conditions and discussed why he did not apply them in Applicant's case. The Judge explained why the evidence Applicant presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. Jun. 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline G is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board