

KEYWORD: Guideline G

DIGEST: The Judge's made unchallenged findings that Applicant was arrested for DUI in 2001 and pleaded guilty, arrested again for DUI in 2004 and failed to appear. Applicant is currently on probation and receiving treatment. Adverse decision affirmed.

CASENO: 06-19487.a1

DATE: 06/06/2008

DATE: June 6, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-19487
)	
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 29, 2007, DOHA issued a statement of reasons (SOR) 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 the case be decided on the written record. On March 17, 2008, after considering the record, Administrative Judge Martin H. Mogul denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s failure to mitigate the Guideline G security concerns is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

Applicant elected to have his case decided on the written administrative record, but filed no response to the government’s file of relevant material (FORM). His appeal offers a detailed explanation about his alcohol-related conduct, his current efforts at rehabilitation, and his job performance. Applicant also attaches a copy of his attendance record for his current alcohol treatment program. However, the Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

In this case, the Judge made unchallenged findings as follows: Applicant had consumed alcohol, at times in excess and to the point of intoxication, from approximately 1999 to at least 2007. In 2001, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI) and Driving with a Blood Alcohol Content (BAC) of .08% or more. He pleaded guilty and was sentenced to a one-year suspension of his driver’s license, 240 hours of community service, a fine, and three years probation. In 2004, Applicant was arrested and charged with DUI and Driving with a BAC of .08% or more. He failed to appear, and a Bench Warrant was issued for his arrest. He pleaded guilty and was sentenced to 30 days in jail, stayed, and placed on probation for three years. Applicant was also ordered to attend an 18-month Multiple Offender Alcohol Program, and to pay a fine. Decision at 2.

Applicant is currently on probation and receiving treatment. His program treatment manager wrote that Applicant “admits to having a problem with alcohol dating back to his early 20’s and states there is a history of alcoholism on the fraternal side of the family.” *Id.* at 3. In reaching his adverse clearance decision, the Judge noted that: “Since Applicant did not testify before me, nor offer any independent evidence about his current alcohol consumption, I have no evidence to conclude that Applicant has complied with the discharge plan of the program or that his alcohol difficulties have been resolved.” *Id.*

The Board has examined the Judge’s decision in light of the record as a whole and concludes that the Judge has drawn ‘a rational connection between the facts found’ under Guideline G and his adverse decision. *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). “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). Accordingly, the Judge’s adverse decision is not arbitrary, capricious, or contrary to law.

Order

The decision of the Judge 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