

KEYWORD: Guideline G; Guideline E

DIGEST: The challenged finding is based on substantial record evidence. Adverse decision affirmed.

CASENO: 06-23204.a1

DATE: 05/05/2008

DATE: May 5, 2008

In Re:)	
)	
-----)	ISCR Case No. 06-23204
)	
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 June 29, 2007, 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 that the case be decided on the written record. On January 23, 2008, after considering the record, Administrative Judge Henry Lazzaro denied Applicant's request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's finding that Applicant had failed to list a 2005 conviction on his security clearance application (SCA) was error. We also construe Applicant's appeal as claiming that the Judge's adverse security clearance decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant has been employed as a simulator technician at an Army base. He has possessed a secret clearance since 1984.

Applicant has been charged with with DUI four times—in 1982, 1987, 1999, and 2000. Each offense resulted in a conviction (the 1999 offense was reduced to reckless driving). Twice he has been required by the court to attend a DUI education program. In addition, in 2001 he was charged with driving with a revoked license and for an open-container violation.

In 2003, DOHA issued a SOR alleging the misconduct described above. In response to that SOR, Applicant stated that he had quit drinking alcohol altogether. Applicant requested a hearing. At the hearing he testified that he did not want to drink in the future. Applicant also presented results of a psychological evaluation, which concluded that, while he did not meet the criteria for alcohol abuse, Applicant should abstain from alcohol in the future. On March 18, 2004, after the hearing, the Judge issued a decision in which she continued Applicant's security clearance.¹

On March 30, 2005, Applicant was charged with public intoxication. He was convicted of this offense on April 6, 2005. He completed his SCA on January 31, 2006. Question 24 inquired about alcohol related offenses. Applicant listed the offenses which had occurred prior to his 2003 SOR but did not list the 2005 offense.

The Board has examined the challenged finding and concludes that it is 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.”) *See also Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). Applicant has submitted new evidence in support of his appeal. The Board cannot consider new evidence. Directive ¶ E3.1.29.

¹In deciding in Applicant's favor, the Judge stated, “Applicant moderated his drinking and in August 2003 made a decision to stop drinking. Although he has only six months of abstinence, he has not had any subsequent alcohol-related incidents for over two years. Applicant has maintained his resolve for sobriety . . .” Item 5, Administrative Judge Decision, March 18, 2004, at 7.

In ruling against Applicant, the Judge noted his extensive history of alcohol abuse and his awareness of the security significance of such misconduct, reasonably concluding that Applicant has not “admitted to a continuing alcohol problem nor has he taken positive steps to prevent a recurrence.” Decision at 6. Part of Applicant’s response to the Government’s file of relevant material (FORM) was to show that some of his offenses had been expunged from his record. The Judge stated that Applicant had provided no reason to believe that he was factually innocent of the expunged offenses; consequently, the Judge properly considered them in evaluating Applicant’s security concerns. In addition, the Judge concluded that Applicant’s denial of a deceitful intent in failing to list his 2005 incident on the SCA was not credible. Examined in light of the entire record, the Judge’s decision articulates “a satisfactory explanation for [his] conclusions, including a rational connection between the facts found” and his adverse decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). Accordingly, the Judge’s adverse decision is not arbitrary, capricious, or contrary to law.

Order

The Judge’s adverse security clearance decision 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