

KEYWORD: Guideline G; Guideline E

DIGEST: In evaluating an applicant’s case, a Judge must carefully consider the record as a whole. This includes not only considering the extent to which an applicant’s circumstances raise concerns about his or her reliability but also giving fair consideration of the applicant’s mitigating evidence. We find no reason to conclude that the Judge failed in this regard.

CASE NO: 12-09900.a1

DATE: 12/07/2016

DATE: December 7, 2016

In Re:)	
)	
-----)	ISCR Case No. 12-09900
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Philip D. Cave, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 21, 2015, DoD issued a statement of reasons (SOR) 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 August 26, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has held a clearance since 2002. He enjoys an excellent reputation for honesty, reliability, and job performance. His performance evaluations rate him as generally exceeding expectations.

Applicant had several alcohol-related offenses between 1999 and 2011. These include an instance of public intoxication, three DWI/DUIs, and an instance in which he was fired from a job because of attendance issues related to alcohol consumption. After his last DUI, in 2011, Applicant installed an alcohol interlock device on his car. The charge was later dismissed. He has maintained the interlock device on his car and has stopped associating with a friend with whom he previously drank.

Applicant stopped drinking for about six months after his last DUI arrest. However, he resumed drinking, even after having been diagnosed as alcohol-dependent and advised to abstain.¹ He consumed alcohol while residing in a sober living house. He testified that he had not consumed alcohol for five months prior to the hearing.

Applicant did not report his 2011 DUI arrest to his employer or to his Facility Security Officer (FSO). He claimed that he was not aware of the duty to report such conduct, although he knew that his clearance was up for renewal and that the misconduct would have to be reported then. In completing his security clearance application in 2012, Applicant disclosed his DWI/DUIs. However, at the time of his subsequent interrogatory response, he was continuing to drink, although he claimed not to the point of intoxication.

At the hearing, Applicant acknowledged that he is alcohol-dependent. He stated that he stopped drinking in the months prior to the hearing because of health and economic concerns. He attended Alcoholics Anonymous (AA) while in the sober living house. Although he later stopped, he has resumed AA attendance. The longest period of time that he has remained sober is six months.

The Judge's Analysis

The Judge noted that Applicant's last DUI was five years ago. However, he also noted that his DWI/DUI arrests were separated from one another by intervals of several years, which undercuts the mitigating effect of the elapse of time since his last offense. He also cited to evidence that Applicant continued to drink while in the sober living house. The Judge concluded that Applicant's

¹The SOR alleged that Applicant received inpatient treatment from an alcohol and drug treatment center for about 11 days in early 2010, followed by two months of outpatient treatment. Applicant was diagnosed as alcohol-dependent. SOR ¶¶ (e) and (f). It also alleged that he received twelve days of inpatient care and six weeks of outpatient care from a different facility July 2010 until October 2010. This facility also diagnosed him as alcohol dependent. SOR ¶ (h). Applicant admitted each of these allegations. SOR Response, dated September 29, 2015.

claim not to have known about his duty to report his misconduct was not credible. He stated that Applicant's interlock device appeared to have been for the purpose of avoiding prosecution. He stated that Applicant had continued to drink even after multiple arrests and after having been advised to abstain because he was alcohol-dependent.

Discussion

Applicant contends that the Judge seems to believe that alcoholism is *per se* disqualifying for a clearance. He reiterates favorable evidence, such as his employment record, his no longer associating with his former drinking companion, his use of the interlock device on his car, etc., arguing that the record shows that he has mitigated the concerns arising from his problem with alcohol.

In evaluating an applicant's case, a Judge must carefully consider the record as a whole. *See, e.g.*, ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016). This includes not only considering the extent to which an applicant's circumstances raise concerns about his or her reliability but also giving fair consideration of the applicant's mitigating evidence. We find no reason to conclude that the Judge failed in this regard. To the contrary, he made extensive findings about Applicant's circumstances, noting his favorable evidence and addressing it in his analysis. His overall decision focused on the extent of Applicant's misconduct, his resumption of drinking after having been advised to abstain due to alcohol-dependence, and the lack of credibility for his claim that he did not know he had to report conduct such as the 2011 DUI.

To the extent that Applicant is contending that the Judge was biased against him due to Applicant's alcoholism, he has failed to rebut the presumption that the Judge was impartial in the performance of his duties. *See, e.g.*, ISCR Case No. 12-10122 at 3 (App. Bd. Apr. 22, 2016). Applicant's ability to argue for an alternative interpretation of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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