

Applicant raised the following issues on appeal: whether the Judge's weighing of the evidence was erroneous; whether the Judge erred in concluding that Applicant had deliberately falsified his security clearance application (SCA); and whether the Judge's adverse clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant holds a Master's degree in computer science and has been a program manager, or deputy program manager, for a defense contractor for over three years. Applicant was arrested, charged, and convicted of driving under the influence of alcohol on eight occasions between January 1984 and March 1991. In addition, he was convicted of driving while intoxicated in March and again in May of 2002. As a result of this last incident, he was directed to attend alcohol counseling, which he completed in 2002. The counselor told Applicant to stop drinking, but he continued to drink moderately. The SCA required Applicant to list any arrests for alcohol-related offenses. Applicant listed the two incidents in 2002, but he did not list the eight incidents in the 1980s and 1990s. Applicant stopped consuming alcohol in June 2007, following an injurious automobile wreck.

Applicant takes issue with the Judge's weighing of certain pieces of evidence, *e.g.*, Applicant's job accomplishments and community service. *See* Directive ¶ E2.8(f). However, a Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). "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* ISCR Case No. 07-10454 at 2 (App. Bd. Aug. 12, 2008).

Furthermore, the Judge's finding as to the deliberate nature of Applicant's omissions on the SCA is sustainable, viewed in light of the record as a whole¹. The Board concludes that the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards the Guidelines G and E mitigating conditions and the whole-person factors.² *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also Motor Vehicle Mfrs.*

¹"[T]here are six questions on the [SCA] concerning an applicant's police record. The first four, to include alcohol-related charges and convictions, are not limited by times. Only the last two, concerning military convictions and any other convictions or criminal matters not mentioned in the previous questions, are limited by time. The question concerning alcohol incidents clearly state[s] an applicant should list any arrests or convictions that are alcohol-related. A reasonable and educated person like Applicant with a Master's degree would know that the alcohol-related question is not limited by time. A person with eight driving while intoxicated offenses in his past more reasonably would not want that information revealed when applying for access to classified information." Decision at 7.

²Applicant argues that the Judge erred in his formal finding against Applicant as to subparagraph 1(l) of the SOR ("You continue to consume alcohol despite your alcohol related arrests and treatment.") He points to record evidence that he ceased consuming alcohol in June 2007 and believes that the Judge's formal finding is inconsistent with the evidence in the record. The Board has considered this argument. While the Judge could have modified the allegation to conform to the evidence, under the facts of this case his failure to do so has not prejudiced Applicant. Applicant also argues that the Judge erred in his formal finding against Applicant on subparagraph 1(k) ("You received alcohol counseling at [counseling center] in July of 2002."), contending that this is inconsistent with an adverse clearance

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 Judge's decision that "it is not clearly consistent with the national security to grant a security clearance for Applicant" is sustainable on this record, in light of the standard set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'")

Order

The Judge's adverse security clearance decision 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

decision. However, viewed in context of the record as a whole, which includes evidence that Applicant continued to drink after his counselor advised him to abstain, the Judge's formal finding is not error.