

KEYWORD: Guideline G; Guideline J; Guideline E

DIGEST: The Judge found that Applicant has a 29-year history of alcohol abuse and criminal conduct. Adverse decision affirmed

CASENO: 08-04232.a1

DATE: 10/09/2009

DATE: October 9, 2009

In Re:	)	
	)	
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	)	
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 December 31, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense

Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 4, 2009, after the hearing, Administrative Judge Darlene D. Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision was arbitrary, capricious or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.<sup>1</sup>

The Judge found, *inter alia*, that Applicant had a 29-year history of alcohol abuse and criminal conduct that included at least six arrests and convictions for DWI. The Judge also found that while his most recent arrest was more than six years old, Applicant continues to drink alcohol, which has been at the root of his criminal problems. She found that Applicant has tried on numerous occasions to abstain from the use of alcohol, but has always returned to it. Also, the Judge found that, while his recent alcohol assessment did not diagnose him with alcohol dependence, Applicant's overall history of alcohol abuse clearly demonstrates that he has had a serious problem. The Judge concluded that, given his continued consumption of alcohol after numerous program recommendations that he abstain from the use of alcohol, it is not clear from his past record that Applicant will not return to his old ways. The Judge concluded that the various mitigating conditions listed under Guidelines G and J were not applicable.

Applicant argues that his alcohol abuse is in full remission and that the record indicates that he has provided adequate evidence of mitigation. He stresses the passage of over six years and positive changes in his lifestyle. Applicant's assertions do not demonstrate error on the part of the Judge.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party'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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. The Judge concluded that there was insufficient evidence to mitigate the lengthy history of alcohol abuse and alcohol-related incidents with the police, given Applicant's decision to continue to consume alcohol. These conclusions are reasonably supported by the record.

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<sup>1</sup>The Judge found in Applicant's favor regarding the three allegations brought under Guideline E. Those favorable findings are not at issue on appeal.

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. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her decision, “including a ‘rational connection between the facts found and the choice made.’” *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). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

**Order**

The decision of the Judge denying Applicant a security clearance 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