

KEYWORD: Guideline G; Guideline E

DIGEST: Each case must be decided on its own merits. Hearing Office cases are not binding on other Judges or on the Board. Adverse decision affirmed.

CASENO: 08-04296.a1

DATE: 03/05/2010

DATE: March 5, 2010

In Re:	)	
	)	
-----	)	ISCR Case No. 08-04296
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esq., Stephanie N. Mendez, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 30, 2009, DOHA 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 November 12, 2009, after the hearing, Administrative Judge Martin H. Mogul 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 security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a system administrator for a Defense contractor. He served for 20 years in the U.S. Navy. He has experienced problems with alcohol for many years. He started consuming alcohol at age 12, and his consumption increased over time whenever he was under stress. He was in a motorcycle accident in 2005, which caused increased binge drinking. He had a previous incident of DWI, as a result of which he was hospitalized and lost his license to drive. While on active duty, he had two "alcohol related" incidents, in which he reported for duty while intoxicated. Twice in the Navy, he received counseling/treatment for his drinking problem, and on both occasions he was diagnosed as alcohol dependent and advised to abstain from alcohol. Applicant continued to drink alcohol, however, despite this advice.

The record includes Applicant's replies to DOHA interrogatories. One of the replies consists of a written statement by a substance abuse counselor to the effect that Applicant had not consumed alcohol since 2005. This statement is not true, in view of Applicant's continued use of alcohol as of the close of the record. The counselor's statement was based on his conversation with Applicant. The Judge concluded that Applicant knowingly permitted this false statement to be submitted to DOHA<sup>1</sup>. Additionally, in completing his security clearance application (SCA), Applicant omitted his DWI charge. Again, the Judge concluded that Applicant deliberately omitted the information.

In his appeal brief, Applicant cites to Hearing Office cases, in which applicants were granted clearances, which he argues are similar to his and support his case for mitigation. We have considered these cases, however, and conclude that they are factually distinct from Applicant's in significant ways. Each case "must be decided upon its own merits." Directive ¶ E2.2.3. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between

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<sup>1</sup>"During his testimony, Applicant claimed that this counselor had asked him if he had any problems and Applicant replied 'no, I have not had any problems.' Applicant claimed that the counselor assumed Applicant meant that he was not consuming any alcohol, although Applicant contended that he did not actually tell him that he was not consuming alcohol, but he did not correct the counselor's misunderstanding . . . I do not find it credible that Applicant was not specifically asked by the substance abuse counselor if he was still consuming alcohol, but even if Applicant's explanation is true, Applicant knew he was leaving the counselor with an incorrect understanding of his alcohol consumption history, and he knowingly did not correct it." Decision at 3.

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 Judge’s adverse 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).

### **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