

KEYWORD: Guideline G; Guideline F

DIGEST: The Judge’s conclusion that Applicant failed to mitigate security concerns arising from his alcohol consumption and from his gambling is sustainable. The Judge is presumed to have considered all the evidence in the record. Adverse decision affirmed.

CASENO: 08-09097.a1

DATE: 02/18/2010

DATE: February 18, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-09097
)	
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 5, 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 F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 24, 2009, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm the Judge's decision.

The Judge made the following relevant findings of fact: Applicant consumed alcohol at a light to moderate rate between 1975 and 1989. Following a 1983 conviction for driving under the influence of alcohol (DUI), Applicant attended 20 Alcoholics Anonymous meetings on the orders of a court, but has attended none since. Applicant's drinking increased between 1989 and 1994, in part to mitigate the effects of a depression problem. Applicant then decreased his drinking, abstaining completely between 1995 and 1997. Applicant's alcohol consumption increased dramatically in 2000. For the next four years, Applicant drove monthly or bi-monthly on weekends to a gambling metropolis, where he would see exhibits, attend concerts, gamble, and drink alcohol. Applicant was arrested and fined for DUI in October 1983, September 1993, October 2004, and December 2004. Applicant has had no further DUI arrests. He continues to drink, but less than before.

Applicant filed for Chapter 7 bankruptcy in December 2006. Applicant had previously maintained good credit. When Applicant traveled to gamble on weekends, he did not believe that he was gambling with money he needed for monthly expenses, but later realized that was the case. Between 2001 and 2006, Applicant spent about \$20,000 on gambling vacations. Applicant now maintains all his accounts in a current state, gambling only occasionally and only with money not needed to pay bills. Applicant is praised by his supervisor for his strong work ethic.

On appeal, Applicant points out two pieces of evidence which indicate that he has no further need of treatment or counseling for his consumption of alcohol. Applicant also restates his testimony that he appreciates that alcohol use can and does cause problems. He repeats that he consumes alcohol only rarely and has not abused alcohol since December 2004.¹ That was mitigating evidence for the Judge to consider, and there is a rebuttable presumption that the Judge considered it unless he specifically stated otherwise. *See, e.g.*, ISCR Case No. 07-16240 at 2 (App. Bd. Oct. 1, 2008). However, 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*. 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. 07-10454 at 2 (App. Bd. Aug. 12, 2008).

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 Judge's adverse decision is sustainable on this record. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)

¹Applicant's statement regarding family support is new evidence, which the Board cannot consider on appeal. Directive ¶ E3.1.29.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board