

KEYWORD: Guideline G; Guideline E

DIGEST: Applicant presented a plausible favorable interpretation of the record evidence. However, it was not sufficient to demonstrate that the Judge’s analysis was erroneous. The Board need not agree with a Judge’s decision to find it sustainable. Adverse decision affirmed.

CASENO: 08-09236.a1

DATE: 01/14/2010

DATE: January 14, 2010

In Re:)		
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-----)		ISCR Case No. 08-09236
)		
Applicant for Security Clearance)		
)		

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Leslie McAdoo Gordon, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 18, 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 September 30, 2009, after the hearing, Administrative Judge Rita C. O’Brien denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in her application of the pertinent Alcohol Consumption Mitigating Conditions (ACMC) and whether the Judge's whole-person analysis was arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is 41 years old and works for a defense contractor. He previously worked for another defense contractor from 2003 to 2007. He is married with four children.

Applicant began consuming alcohol at about age 15. By the time he was in his thirties, Applicant consumed alcohol at home every night. For a period of about 10 years, Applicant consumed one to two pints of vodka daily.

From November 2007 through June 2008 Applicant received poor job performance evaluations. Part of this period occurred while Applicant was drinking daily, although, at the hearing, Applicant stated that his alcohol use had not affected his job performance.

When drinking, Applicant experienced "anger issues." Decision at 3. He would be verbally abusive and aggressive to members of his family. In February 2008, several members of his family met with Applicant, expressed their concerns to him about his drinking, and advised that they had reserved a place for him at a treatment center. Applicant entered the center, although the admission notes state that he "had significant anger, did not seem motivated or willing to be there, and stated that he 'would seek treatment for thirty days and not extend his treatment.'" *Id.* A physician at the treatment center diagnosed Applicant as alcohol dependent.

Applicant expressed a desire to transition out of the facility "as soon as possible." *Id.* at 4. An official at the treatment center recommended that he attend an intensive outpatient appointment, attend daily Alcoholics Anonymous (AA) meetings, continue individual therapy, and attend marital counseling. He canceled the appointment for the outpatient treatment. He attends AA meetings approximately once a month. He has abstained from alcohol since February 2008. A psychotherapist interviewed Applicant and concluded that his alcohol dependence is in remission. Applicant talked with the psychotherapist for "a couple of hours." *Id.* at 5. She did not conduct tests or review his medical records.

Applicant contends that the Judge's analysis of the mitigating conditions is erroneous. He avers that the Judge should have favorably applied three mitigating conditions: ACMC 23(a),² (b),³

¹The Judge's favorable findings under Guideline E are not at issue in this appeal.

²"[S]o much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

³"[T]he individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)[.]"

and (d).⁴ He also contends that a proper whole-person analysis further supports a favorable decision in his case. Applicant's discussion of these issues focuses in large measure upon record evidence that he had completed an alcohol treatment program, that he has been abstinent since entering the program, and the diagnosis of alcohol dependence in remission from the psychotherapist. Applicant does not challenge the Judge's findings *per se*, but he does challenge the Judge's weighing of the evidence.

In the Analysis portion of the decision, the Judge discussed evidence favorable to Applicant, such as that cited above. However, she also noted record evidence that cuts the other way. For example, she stated Applicant's medical records "show that he sometimes appeared angry and unwilling to be at the treatment center."⁵ *Id.* at 7. She also referred to evidence that (1) Applicant wanted to leave the center as soon as possible, despite his counselor's recommendation that he remain and (2) Applicant did not fully comply with all of the after care recommendations, such as daily participation in AA. She concluded that, in light of the many years during which Applicant drank "to his own and his family's detriment" (*Id.* at 10), his 18 months of sobriety were not sufficient to demonstrate that he had truly gained control of his problem.⁶ She also explained that she accorded the psychotherapist's diagnosis of remission less weight due to the limited time the therapist spent talking with Applicant and the absence of tests or records review.

Although Applicant has presented a plausible favorable interpretation of the record evidence, that is not enough to demonstrate that the Judge's decision was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). In order to prevail, an applicant must demonstrate that he has mitigated the security concerns alleged in the SOR under the standard set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), which requires that "a clearance may be granted only when 'clearly consistent with the interests of the national security.'" This standard is in accord with the national security interests which it is designed to guard. After considering the decision, the record, and the briefs of the parties, the Board concludes that Judge has drawn a rational connection between the record and her ultimate decision. This connection is not undermined by the evidence which Applicant discusses in his appeal.

⁴"[T]he individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program[.]"

⁵*See* Government Exhibit (GE) 4, Medical Records, at 80: "Client does not seem too motivated or willing to be here."

⁶The Judge's findings include a reference to the Subject Personal Interview conducted as part of Applicant's security clearance investigation. Included in GE 2, Response to Interrogatories, the interview summary attributes to Applicant certain comments that suggest ambivalence toward his problem. "The reason for consuming alcohol was to relax. [Applicant] did not feel that his drinking was out of control but his wife did. Drinking alcohol did not have any effect on [Applicant's] behavior. Drinking alcohol did not cause any problems or contribute to any problems . . . [Applicant] has always been responsible with his consumption of alcohol. [Applicant] stopped drinking for his family."

In support of his appeal, Applicant discusses other Hearing Office cases which he contends granted clearances under facts similar to his own. The Board gives due consideration to this argument. However, each case “must be decided upon its own merits.” Directive ¶ E2.2.3. 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). In light of the discussion above, the Board concludes that the Judge’s adverse security clearance decision is sustainable. “The Board need not agree with a Judge’s decision in order to find it sustainable.” ISCR Case No. 06-23881 at 2 (App. Bd. Nov. 2, 2007).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, 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