

KEYWORD: Guideline G; Guideline E

DIGEST: Th Board does not a read sentence in isolation. Adverse decision affirmed.

CASENO: 09-01331.a1

DATE: 06/25/2010

DATE: June 25, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-01331
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Kevin R. Hancock, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 28, 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 March 25, 2010, after the hearing,

Administrative Judge Mark Harvey 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 erred in his application of the pertinent mitigating conditions.¹ Finding no error on the existing record, we affirm.

The Judge made the following pertinent findings of fact: Applicant began consuming alcohol at age 15. His alcohol consumption increased in his mid-20s. In 1996, finding that his drinking was affecting his work, he attended a few meetings of Alcoholics Anonymous (AA). Although he did not complete the 12-step program, he did manage to control his drinking until 2002.

In 2002 he increased his drinking, consuming alcohol during the day in order "to feel normal." Decision at 3. He was fired from his job due to alcohol-related absenteeism and, from 2006 until 2007, he sometimes drank a fifth of bourbon a day. He was diagnosed as "alcohol dependent," and received inpatient alcohol detoxification therapy 10 times in the five years following 2002. Each treatment was followed by a return to drinking, except the last. He has been abstinent since December 2007.

Applicant takes issue with some of the statements in the Judge's decision. One, for example, he contends is erroneous on its face. In the Analysis portion of the decision, the Judge stated that, given the extent of Applicant's alcohol abuse and his many relapses into drinking following inpatient alcohol treatment, his 27 months of abstinence since December 2007 were not sufficient to mitigate the Guideline G security concerns in his case. The Judge then stated, "One more year of abstinence (from the date of this decision) is needed to provide sufficient assurance that he will not return to alcohol consumption." Decision at 15.

Applicant contends that the Judge's requirement of 39 total months of sobriety to mitigate the Government's Guideline G security concerns is arbitrary, capricious, and contrary to law. To the extent that such a reading is what the Judge intended, then it is error. However, the Board does not read a sentence in isolation. ISCR Case No. 05-14488 at 4 (App. Bd. Aug. 10, 2007). The Judge noted the many positive aspects of Applicant's record, including his lengthy period of abstinence. However, he measured these against evidence that Applicant had frequently relapsed after treatment in the years between 2002 and 2007. The Judge plausibly concluded that this history of relapse gave reason to doubt Applicant's long-term commitment to sobriety and that, accordingly, Applicant's presentation was not sufficient to mitigate his case under the standard set forth in *Department of the Navy v. Egan*, 484 U.S. 518 (1988). This conclusion is sustainable. In this light, the Judge's comment concerning an additional year of sobriety may be simply an acknowledgment that, once an Applicant's clearance is denied, he is precluded from reapplying for one year. Directive at E3.1.37. To the extent that the Judge's sentence constitutes a recommendation for a future grant of a clearance to Applicant, based on facts not before the Judge, such a recommendation is out of place and can have no binding effect on the Government.

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

Applicant also contends that the Judge's findings satisfy the mitigating conditions *per se*. He argues that it was therefore arbitrary and capricious to deny Applicant a clearance. For reasons set forth in the previous paragraph, we conclude that there is no discrepancy between the Judge's findings and his ultimate adverse decision. The Judge examined the relevant data and articulated a satisfactory explanation for the 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.

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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board