

KEYWORD: Guideline G

DIGEST: Applicant cites to favorable record evidence. Applicant's ability to interpret the record differently is not sufficient to demonstrate that e Judge erred. Adverse decision affirmed.

CASENO: 11-00455.a1

DATE: 11/20/2012

DATE: November 20, 2012

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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 May 18, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 30, 2012, after considering the record, Administrative Judge Michael H. Leonard 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 failed to consider, or misweighed, significant record evidence and whether the Judge erred in his application of the mitigating conditions. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Federal contractor. A graduate of a well-known university, he holds a master’s degree from a military postgraduate school and is in the process of completing a MBA. Applicant served in the Navy from 1988 until 2005. During that time, he committed two DUI offenses, both of which were prosecuted in state courts. Subsequently, Applicant resigned his commission in lieu of being administratively separated. Applicant fully disclosed his DUI offenses during the course of processing his recent security clearance application (SCA).

In 2005, while working for a Federal contractor, Applicant was granted eligibility for access to sensitive compartmented information (SCI). In 2007, he signed a code of conduct acknowledging that future alcohol incidents would raise concerns about his continued access. In 2009, Applicant was arrested and charged with this third DUI offense. He had consumed two bottles of wine over a four-hour period, and his blood alcohol content was found to have been .17. Applicant self-reported this incident to his employer.

This incident was initially charged as a felony, being Applicant’s third offense within 10 years. However, the court dropped it to a misdemeanor because the second offense, which occurred in a different state, had not met the jurisdiction’s criteria for a DUI conviction. Applicant pled guilty, was given a 12-month jail sentence with 10 months suspended, a fine of \$1,500, community service, suspension of Applicant’s driver’s license, and mandatory attendance at an alcohol safety program. The Government agency revoked Applicant’s access to SCI.

Applicant advised his interviewer that he had no intention of drinking again. In his reply to the File of Relevant Material, he stated that he had abstained from alcohol for more than three years and that he attended Alcoholics Anonymous regularly. He has completed the court-ordered alcohol course in 2009. He also attended an alcohol counseling program from June 2009 to June 2010, successfully completing it.

In the Analysis, the Judge noted Applicant’s evidence that he had been abstinent since his last offense, accepting this evidence as credible. However, he concluded that, under the facts of this case, Applicant had failed to meet his burden of persuasion as to mitigation. The Judge cited to evidence of the multiple nature of Applicant’s alcohol offenses and Applicant’s having committed his third DUI despite having signed a statement acknowledging that future misconduct could result a loss of his SCI access. The Judge stated that the number of times Applicant was provided with an

opportunity to correct his conduct and yet failed to do so was noteworthy. He concluded that a “substantial, long-term track record of sobriety and law-abiding conduct is necessary to mitigate the concerns.” Decision at 7.

Applicant’s appeal brief cites to record evidence, including that he had maintained three years of sobriety, that he had held a clearance for many years without incident or concern, and that he had complied with his employers’ reporting requirements concerning his offenses. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-04287 at 3 (App. Bd. Sep. 11, 2012). Applicant’s brief is not sufficient to rebut this presumption. Applicant stresses evidence of his years of sobriety following his last incident in support of his argument that he had demonstrated mitigation of the security concerns in his case. We acknowledge that this is significant favorable evidence. As stated above, the Judge cited to it in the Analysis. However, the Judge’s weighing of the evidence is reasonable and is consistent with the record the record. As such, Applicant’s contention on appeal amounts to a plausible alternative interpretation of the evidence, but it is not enough to demonstrate that the Judge’s decision goes against the weight of the evidence. *See, e.g.*, ISCR Case No. 11-03500 at 4 (App. Bd. Feb. 28, 2012). Applicant’s brief cites to evidence from outside the record, which we cannot consider. Directive ¶ E3.1.29.

Accordingly, 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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### **Order**

The Judge’s 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