

KEYWORD: Guideline G; Guideline H

DIGEST: The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility. Security clearance determinations are not limited to consideration of conduct during duty hours. A good security record is not a bar to an adverse decision. The scope and methods of clearance investigations are, in general, outside the jurisdiction of the Hearing Office and the Appeal Board. Adverse decision affirmed.

CASE NO: 11-05684.a1

DATE: 09/24/2013

DATE: September 24, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-05684
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 21, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) and Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On June 17, 2013,

after considering the record, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse clearance decision is arbitrary, capricious or contrary to law.

In his appeal brief, Applicant states that he is very disappointed with the result in his case and asks that the Board reconsider the Judge's adverse decision. In support of his request, he argues that he and his family are still receiving counseling and that he has a stronger support system in place. He also argues that alcoholism is a disease, that there are many functioning alcoholics, and that there is no connection between alcoholism and being a security threat. Finally, he asserts that the investigator should have spoken with his co-workers and neighbors of AA associates concerning his integrity and dedication to his work.

The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. Security clearance determinations are not limited to consideration of work performance or conduct during duty hours. *See, e.g.*, ISCR Case No. 07-08113 at 3 (App. Bd. Jul. 15, 2008). The federal government need not wait until an applicant actually mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). The absence of security violations does not bar or preclude an adverse security clearance decision. *See, e.g.*, ISCR Case No. 07-08113, *supra*.

In general, the scope and methods of personnel security investigations are outside the scope of review of the Hearing Office Judge and the Board. Moreover, even if an applicant believes that an investigation was incomplete or flawed, he is not without recourse in DOHA proceedings. The applicant can present evidence, either at a hearing or in response to a File of Relevant Material (FORM), that is relevant and material to his response to the SOR allegations and evidence presented by Department Counsel, or supportive of applicant's burden of persuasion under the Directive. *See, e.g.*, ISCR Case No. 02-05854 at 3 (App. Bd. Apr. 15, 2004).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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. 11-07810 at 2 (App. Bd. Aug. 5, 2013).

The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. Additionally, it does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge

examined the relevant data and articulated a satisfactory explanation for his decision. “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). Therefore, the Judge’s unfavorable security clearance decision is sustainable.

Order

The decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Member, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board