

KEYWORD: Guideline G

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. Hearing Office decisions are not binding on the Appeal Board or on other Hearing Office Judges. Adverse decision affirmed.

CASE NO: 11-10178.a1

DATE: 08/29/2013

DATE: August 29, 2013

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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**

Corey R. Williams, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 12, 2012, DoD 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 hearing. On June 25, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 properly to apply the pertinent mitigating conditions and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

Applicant was arrested and charged with DUI in March 2010. He pled guilty and was sentenced to a fine and to community service. The court also required him to attend an 18 month DUI program, including attendance at Alcoholics Anonymous (AA). The incident occurred after Applicant had been rejected for four or five job applications. He was upset and visited a bar with friends, where he consumed eight to ten mixed drinks. At some point, he decided to drive home so as to avoid a parking ticket. Applicant was on probation by the close of the record.

In April 2007, Applicant was arrested and charged with DWI, in a different state from the incident referenced above. He pled guilty and was sentenced to 30 days in jail (suspended) and 12 months probation. Applicant testified that the incident occurred in the wake of a nationally-reported tragedy, and he and his friends went to a bar to reflect on the incident. Upon leaving the bar, Applicant was arrested for the offense.

At the time of the hearing, Applicant was continuing to consume alcohol. He advised that he has considered abstention and stated that he has no intention of driving under the influence again. He also stated that he did not realize that the 2010 incident would be considered a second offense, insofar as it occurred in a different state from the earlier one. He submitted a post-hearing document to the effect that he had decided to abstain from alcohol consumption.

Applicant enjoys a good reputation for his moral character. He has completed the required 18-month multiple offender program.

### **The Judge's Analysis**

The Judge concluded that Applicant's circumstances raised Guideline G security concerns. He further concluded that Applicant had failed to mitigate those concerns, citing to evidence that Applicant was still on probation as of the close of the record and that he continued to drink alcohol. He noted Applicant's post-hearing statement of intent to abstain but stated that it was too soon to determine that Applicant's security-significant conduct was behind him. In the whole-person analysis, the Judge referred to his comments regarding the mitigating conditions, stating that Applicant's circumstances left him with significant questions and doubts as to Applicant's worthiness for a clearance.

### **Discussion**

Applicant cites to record evidence of his disappointment over his job rejections and his dismay over the tragic incident in the news, arguing that the evidence mitigates the concerns arising from his DUI offenses. He contends that the Judge failed to consider this evidence. A Judge is

presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-01038 at 3 (App. Bd. Jun. 26, 2013). In this case, the Judge made findings about the evidence Applicant has cited, but he reasonably explained why he had concluded that Applicant had failed to meet his burden of persuasion as to mitigation. Applicant has not rebutted the presumption that the Judge considered all of the evidence.

Applicant cites to decisions by the Hearing Office, which, he contends, support his case for a security clearance. We have given these cases due consideration as persuasive authority. However, they are not binding on us or on other Hearing Office Judges. *See, e.g.*, ISCR Case No. 11-07666 at 3 (App. Bd. Jun. 7, 2013). These cases do not demonstrate that the Judge erred.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The 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 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