

KEYWORD: Guideline J; Guideline E

DIGEST: The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. Adverse decision affirmed.

CASENO: 11-12980.a1

DATE: 07/19/2013

DATE: July 19, 2013

In Re:	)	
	)	
-----	)	ISCR Case No. 11-12980
	)	
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 September 5, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for

that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). The SOR was subsequently amended by Department Counsel adding allegations under Guideline F (Financial Considerations). Applicant requested a hearing. On April 10, 2013, after the close of the record, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant timely 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.

Applicant contends that the Judge’s adverse decision should be reversed because the criminal conduct at issue involved minor offenses which were not recent.<sup>1</sup> Applicant also notes several minor errors in the Judge’s findings. However, none of the errors cited by Applicant are sufficient either individually or cumulatively to exert an effect on the outcome of the case, and the Judge’s material findings of security concern are based upon substantial record evidence.

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. 12-11097 at 2 (App. Bd. Jun. 20, 2013).

In this case, the Judge found that Applicant had been charged seven times with misdemeanor-level offenses between 1987 and 2010. Decision at 2-4. Although the Judge noted that Applicant’s 2010 offense was “not particularly recent,” he concluded that fact alone was not sufficient to mitigate the security concerns given the totality of the record before him. *Id.* at 7-8. In that regard, the Judge noted that Applicant had multiple offenses over a relatively lengthy period of time, and alcohol had contributed to several of the offenses. In 2004, a DOHA Judge had continued Applicant’s security clearance and had noted Applicant’s abstinence from alcohol consumption prominently in his decision. Subsequent to that decision, Applicant had resumed the consumption of alcohol and committed two criminal offenses in the last five years. *Id.* at 8, 12. In light of the forgoing, the Judge’s adverse conclusions are sustainable.

The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He found in favor of Applicant with respect to some of the allegations, but reasonably explained why the mitigating evidence was insufficient to overcome all of the government’s security concerns. The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary,

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<sup>1</sup>The Judges’s favorable findings under Guideline F are not at issue on appeal.

capricious, or contrary to law. 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 of the Judge 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board