

KEYWORD: Guideline J; Guideline G

DIGEST: Given the Judge's sustainable adverse finding regarding one allegation, the error regarding the other allegation is harmless in that it did not affect the overall outcome of the case. Adverse decision affirmed.

CASENO: 12-00678.a1

DATE: 06/13/2014

DATE: June 13, 2014

In Re:)
)
)
-----) ISCR Case No. 12-00678
)
)
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 May 29, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 12, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline G are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is retired from the U.S. military. While on active duty, he voluntarily entered into alcohol counseling, which he successfully completed. In 2011, after a company party at which he consumed vodka, Applicant drove home. A policeman pulled him over, eventually arresting him for DUI. Part of his sentence was to complete a six month level 2 first offender alcohol program and to undergo informal probation for three years.

In May 2012, Applicant was charged with violating the terms of his probation by dropping out of the alcohol program when he moved to another state. Applicant was on probation as of the close of the record.

The Judge’s Analysis

The Judge concluded that Applicant’s DUI and probation violation raised security concerns under Guideline J. He noted that Applicant remained on probation. Although citing to Applicant’s character references, he stated that he still had doubts about Applicant’s fitness for a clearance.

Discussion

Applicant challenges the Judge’s treatment of the probation violation. We have considered Applicant’s brief in light of the record as a whole. The Judge’s adverse finding under SOR ¶ 1.b (the probation violation) did not address the totality of the evidence, including evidence that tended to mitigate the seriousness of this incident. However, given the Judge’s sustainable adverse finding under ¶ 1.a, this error is harmless in that it did not affect the overall outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013) for definition of harmless error.

Applicant cites to record evidence, such as his military service and decorations, his community involvement, and his good duty performance. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). Applicant’s appeal brief is not sufficient to rebut this presumption.

The Judge examined the relevant data and, except for the harmless error noted above, articulated a satisfactory explanation for the decision. The decision is sustainable on this record.

An applicant's ongoing probationary status is relevant in evaluating the extent to which he or she has demonstrated rehabilitation. *See, e.g.*, ISCR Case No. 05-07983 at 5 (App. Bd. Oct. 1, 2007). "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 Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board