

KEYWORD: Guideline G; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. The Appeal Board has no authority over how clearance investigations are conducted. An applicant has the responsibility to present evidence in mitigation and extenuation. Adverse decision affirmed.

CASE NO: 12-03077

DATE: 05/13/2013

DATE: May 13, 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**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 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) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 21, 2013, 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 issues on appeal: whether the Judge erred in his application of the mitigating conditions; whether the Judge properly applied the whole-person concept, and

whether the decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

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

Applicant began drinking around 1989, consuming several beers a night on weekends. By the early 2000s he was drinking even more, consuming around five beers daily. Sometimes he would go to work hungover. By the mid-2000s he began consuming shots of liquor. He first sought alcohol treatment in 2009. He left the program one day short of completion, characterizing himself as having been "in denial." Decision at 2. He remained sober for a few months, but he resumed drinking after his father passed away. He experienced attendance problems at work and entered into a second alcohol treatment program, which diagnosed him as alcohol dependent.<sup>1</sup> He remained sober for about six months but resumed drinking. He entered two more alcohol treatment programs. The last of these, which he entered in April 2012, consisted of both in-patient and out-patient treatment as well as after-care. Applicant states that he had resumed drinking prior to entry into this last program due to grief over the death of his niece. Applicant attends Alcoholics Anonymous twice a week. He has not consumed alcohol since entering his last treatment program.

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

The Judge found that Applicant's circumstances raised concerns both under Guideline G and Guideline E. In evaluating Applicant's case for mitigation, the Judge cited to evidence of Applicant's having resumed drinking after each of his first three treatment programs. He stated that Applicant's less than a year of sobriety is insufficient to demonstrate genuine rehabilitation. In the whole-person analysis the Judge noted Applicant's favorable character evidence but concluded that this evidence was not sufficient to mitigate concerns arising from Applicant's conduct.

### **Discussion**

Applicant cites to evidence of his good character, his employment history, his good security record, family circumstances that influenced his drinking, etc. He contends that this evidence supports his case for a security clearance. The Judge made findings about much of this evidence. However, the gravamen of his overall decision appears to have been Applicant's repeated return to drinking despite attendance at numerous treatment programs and his many years of denial about his alcohol abuse. A reasonable person could conclude that Applicant's alcohol history impugns his reliability and trustworthiness, traits crucial to both Guidelines G and E.<sup>2</sup> Given the record that was before him, the Judge's treatment of the mitigating conditions is sustainable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or

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<sup>1</sup>In the Analysis the Judge stated that Applicant had "been diagnosed as suffering from alcohol abuse or dependence on at least four occasions." Decision at 4.

<sup>2</sup>See Directive, Enclosure 2 ¶¶ 15, 21.

contrary to law. *See, e.g.*, ISCR Case No. 11-08087 at 2-3 (App. Bd. Mar. 5, 2013). Despite Applicant’s challenge to the Judge’s whole-person analysis, the record supports a conclusion that the Judge considered the totality of Applicant’s conduct in reaching his decision, thereby complying with Directive, Enclosure 2 ¶ 2(a). Applicant contends that officials erred in conducting his background investigation, in that they failed to interview several witnesses that he believed could have provided relevant information. We have no authority over how clearance investigations are conducted. *See, e.g.*, ISCR Case No. 09-06026 at 3 (App. Bd. Mar. 5, 2013). In any event, Applicant was responsible for presenting evidence to rebut, explain, extenuate, or mitigate the concerns raised by his circumstances. Directive ¶ E3.1.15.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, 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