

KEYWORD: Guideline F; Guideline G; Guideline H; Guideline I

DIGEST: In his appeal brief, Applicant describes the Judge’s summary of his clinical history as “detailed and thorough,” although he claims there are a “few errors” in her findings. For example, he challenges the Judge’s statement that he turned down a referral to a “no cost” rehabilitation program in 2016 by arguing he would have been billed for treatment costs not covered by insurance and he would have been responsible for “prohibitive” transportation expenses in getting to and from the distant facility. From our review of the record, we conclude that Applicant has not identified any error that is likely to have affected the outcome of the case. Adverse decision affirmed.

CASENO: 17-04028.al

DATE: 05/08/2019

DATE: May 8, 2019

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 30, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse), Guideline I (Psychological Conditions), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. At the hearing, Department Counsel withdrew the sole Guideline F allegation. Tr. at 12-13. On February 14, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 Guidelines H and I were not raised as an issue on appeal. Consistent with the following, we affirm.

The SOR listed nine Guideline G allegations. One of those allegations had four subparagraphs and another had two subparagraphs. In responding to the SOR, Applicant admitted each of the Guideline G allegations with the exception of denying that he was diagnosed with heroin abuse disorder in 2009.¹ The Judge summarized the case as follows:

Applicant relapsed into abusing alcohol in 2005 after 20 years of abstinence. He continued to drink alcohol against medical advice until as recently as July 2017, despite several inpatient alcohol-detoxification treatments and counseling programs for diagnosed alcohol abuse disorder, severe. He is presently committed to Alcoholics Anonymous (AA), but it is too soon to conclude that his maladaptive use of alcohol will not reoccur.²

The Judge found against Applicant on all of the Guideline G allegations.

In his appeal brief, Applicant describes the Judge’s summary of his clinical history as “detailed and thorough,” although he claims there are a “few errors” in her findings. Appeal Brief at 1. For example, he challenges the Judge’s statement that he turned down a referral to a “no cost” rehabilitation program in 2016 by arguing he would have been billed for treatment costs not covered by insurance and he would have been responsible for “prohibitive” transportation expenses in getting to and from the distant facility. *Id.* From our review of the record, we conclude that Applicant has not identified any error that is likely to have affected the outcome of the case. *See, e.g.,* ISCR Case No. 12-00678 at 2 (App. Bd. Jun. 13, 2014)(an error is harmless if it did not likely effect the overall outcome of the case.).

The balance of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. Examples of these arguments include his claim the Judge mis-characterized his current AA participation as comparable to his participation in earlier years, his contention that he

¹ Under Guideline G, SOR ¶ 1.a alleged, “In May 2009, you were admitted to [hospital name omitted] for alcohol detoxification. You were diagnosed with alcohol abuse disorder and heroin abuse disorder.”

² Decision at 1.

has “attained 20 months of sobriety without any alcohol or other mind-altering substance use[,]”³ and his assertion that his earlier relapses were based on chronic medical and other issues that have been changed or eliminated. On the other hand, “[i]n October 2017, Applicant was evaluated by a duly-qualified licensed clinical psychologist, who opined that Applicant’s alcohol abuse disorder, severe (in early remission) is a condition that would negatively impact his reliability, judgment, stability, and trustworthiness.”⁴ As the trier of fact, the Judge had 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. 15-08684 at 2 (App. Bd. Nov. 27, 2017).

The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

³ Appeal Brief at 3.

⁴ Decision at 15.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board