

KEYWORD: Guideline F; Guideline G; Guideline J

DIGEST: Applicant was arrested twice for firing a weapon after consuming alcohol. He entered a VA substance abuse program the day before the hearing. He has not presented sufficient evidence to establish a pattern of abstinence to overcome his alcohol problems. His criminal conduct did not happen under unusual circumstances and the last offense happened only three years ago. Adverse decision affirmed.

CASENO: 12-08463.a1

DATE: 04/01/2019

DATE: April 1, 2019

In Re: _____)
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Applicant for Security Clearance)

ISCR Case No. 12-08463

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Jane M. Reynolds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 28, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision —security concerns raised under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 23, 2017, and October 17, 2018, the SOR was amended.¹ On December 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is a 62-year-old employee of a defense contractor. He retired honorably from the military. He has been married twice and has five children. He is separated from his wife and resides with his special-needs child. He and his wife are trying to reconcile.

The SOR alleges four financial concerns (Chapter 13 bankruptcy dismissed in 2016; Chapter 7 bankruptcy discharge granted in 2017; Federal tax debt of about \$45,700 for 2009 and 2011 through 2015; and failure to file Federal tax returns on time for 2009 through 2015) and cross-alleges two alcohol consumption and criminal conduct concerns (discharge of a firearm from a moving vehicle after consuming alcohol in 2011 for which he was sentenced to 180 days incarceration with 165 days suspended; and reckless handling of a firearm, swearing in public, and public intoxication in 2015 for which he was sentenced to 12 months probation). Applicant admitted each SOR allegation.

In 2016, Applicant filed his past-due tax returns, and the IRS determined he owed about \$35,000 in back taxes. In April 2018, he agreed with the IRS to a payment plan of \$425 a month. He is current with the IRS payment plan.

Applicant consumed alcohol to deal with his problems and stress. He sought substance abuse counseling. In 2015, he began consulting with a psychologist. He last consumed alcohol the day before his mother's funeral in the fall of 2018. The day before the hearing he began a Veteran's Affairs (VA) substance abuse rehabilitation program. He recognizes that he needs alcohol treatment and does not intend to consume alcohol in the future. The psychologist believes Applicant has taken the counseling to heart and is developing positive coping skills.

While the receipt of a bankruptcy discharge does not amount to a good-faith resolution of debts, Applicant's bankruptcy proceedings in 2016 and 2017 do not create a security concern. Even though he has filed his delinquent tax returns and is now paying his past-due taxes, his tax deficiencies do not demonstrate the high degree of good judgment and reliability required of persons

¹ The SOR amendment on October 17, 2018, withdrew the earlier amendment.

granted access to classified information. He did not provide sufficient evidence to show his tax problems were resolved, under control, or unlikely to recur. He has not acted responsibly and reliably.

Applicant was arrested twice for firing a weapon after consuming alcohol. He entered a VA substance abuse program the day before the hearing. He has not presented sufficient evidence to establish a pattern of abstinence to overcome his alcohol problems. His criminal conduct did not happen under unusual circumstances and the last offense happened only three years ago.

Discussion

Applicant's arguments on appeal amount to a disagreement with the Judge's weighing of the evidence. For example, he argues that he filed his delinquent tax returns and is making a good-faith effort to pay his taxes through a repayment plan. He also notes that he is receiving alcohol treatment, claims he is on his way to being rehabilitated, and maintains he should be given credit for dealing with his problem. 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has not established that the Judge committed any harmful error. 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."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board