KEYWORD: Guideline H

DIGEST: Applicant cites to a Hearing Office decision in support of his appeal. Such decisions are neither binding on other Hearing Office Judges nor on the Appeal Board. The cited Hearing Office decision does not provide a reason to conclude the Judge erred in his analysis or conclusions in this case. Adverse Decision Affirmed

CASE NO: 20-00617.a1

DATE: 08/30/2021

DATE: August 30, 2021

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
Asya Hogue, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 5, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement and Substance Misuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 4, 2021, 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. Consistent with the following, we affirm.

The Judge's Pertinent Findings of Fact and Analysis

Applicant, who is in his thirties, is married, has a master's degree, and works for a defense contractor. In a 2012 security clearance application, he admitted using marijuana about five times in 2008 and 2009. After being granted a security clearance in 2012, he used marijuana about four additional times. He referred to his conduct as being "stupid and immature." Decision at 2, citing to Tr. at 20. He signed a statement of intent not to use illegal drugs in the future.

Even though Applicant asserts he intends to abstain from future drug involvement, his use of marijuana after being alerted to the Government's concern and being granted a security clearance is troubling and reflects a pattern of not being trustworthy. His last usage occurred was as recent as 2018, when he was not an immature teenager but instead was in his mid-to-late twenties. While he is given credit for his honesty in disclosing his marijuana use, he has not been mitigated the drug involvement security concerns.

Discussion

In his appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Rather, he contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. He argues, for example, that his illegal drug use was infrequent and isolated instances of poor judgment that occurred over three years ago and that the Judge did not consider his drug abuse evaluation from a licensed clinical social worker. Applicant's alternative interpretation of the evidence, however, is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). None of his arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record or enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.*

Applicant cites to a Hearing Office decision in support of his appeal. Such decisions are neither binding on other Hearing Office Judges nor on the Appeal Board. *See, e.g.,* ISCR Case No.

17-03363 at 3 (App. Bd. Nov. 29, 2018). The cited Hearing Office decision does not provide a reason to conclude the Judge erred in his analysis or conclusions in this case.

Applicant has failed to establish 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 of the Judge 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