

KEYWORD: Guideline H

DIGEST: Applicant’s brief alludes to the time that it has taken to adjudicate his SCA. We do not have authority to comment on the manner in which officials conduct clearance investigations. He draws our attention to various pieces of record evidence that support his effort to obtain a favorable decision, for example documents substantiating his medical problems, his statement of intent not to misuse drugs in the future, his explanations for his security-significant conduct, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Applicant requests that he be granted a clearance accompanied by a warning against future misconduct. However, this is appropriate only when an applicant’s circumstances are not serious enough to warrant an adverse decision. See Directive, Encl. 2, App. A ¶ 2(h). Given the nature and extent of Applicant’s misconduct, neither the Judge nor other officials erred by failing to apply this procedure. Adverse decision affirmed.

CASENO: 17-01661.a1

DATE: 03/22/2019

DATE: March 22, 2019

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In Re:)	
)	
-----)	ISCR Case No. 17-01661
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 5, 2017, 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 decision on the written record. On November 27, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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 has used marijuana in the recent past. He began doing so in 2008, in order to relieve pain caused by a knee ailment, and a few years later he began growing it himself. In his security clearance application (SCA) he advised that he used marijuana until May 2015. Although he claimed in his SCA that he would not do so again, in fact he later told his interviewer that he used it twice between August 2015 and January 2017. On this last occasion he used marijuana with friends “because it was there.” Decision at 3. From February 2012 until June 2015 Applicant misused various prescription medications, such as morphine, hydrocodone, oxycodone, Oxycontin, tramadol, suboxone, xanax, Ativan, amphetamines, Ritalin, and soma. He stated that he stopped using controlled substances after consultation with a health care provider. He stated that he would never have abused drugs if he had known the effect it would have on his clearance, and he signed a statement of intent never to re-offend.

Applicant’s misuse of controlled substances constituted a pattern of behavior that impugns his willingness to follow rules and regulations. Even though Applicant’s misconduct occurred off duty, it reflects poor judgment and raises questions about his fitness for access to classified information.

Discussion

Applicant’s brief alludes to the time that it has taken to adjudicate his SCA. We do not have authority to comment on the manner in which officials conduct clearance investigations. *See, e.g.*, ISCR Case No. 14-04186 at 3-4 (App. Bd. Oct. 28, 2015). He draws our attention to various pieces of record evidence that support his effort to obtain a favorable decision, for example documents substantiating his medical problems, his statement of intent not to misuse drugs in the future, his explanations for his security-significant conduct, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019). Applicant requests that he be granted a clearance accompanied by a warning against future misconduct. However, this is appropriate only when an

applicant's circumstances are not serious enough to warrant an adverse decision. *See* Directive, Encl. 2, App. A ¶ 2(h). Given the nature and extent of Applicant's misconduct, neither the Judge nor other officials erred by failing to apply this procedure.

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 Y. Ra'anan
Michael Y. 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