

KEYWORD: Guideline E; Guideline H

DIGEST: An applicant's misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about his or her judgment and reliability. Adverse decision affirmed.

CASENO: 17-04198.a1

DATE: 01/15/2019

DATE: January 15, 2019

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 In Re:)
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)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 17-04198

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 7, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and 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 September 28, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 served in the military from 2004 until his honorable discharge in 2011. He has held a clearance, though with some breaks, since 2004. He has a master’s degree. Applicant smoked marijuana regularly before joining the military. He smoked it once while on active duty and resumed using it after his discharge. Some instances of marijuana use occurred while Applicant held a security clearance, and he used it while working in Europe and while performing duties in the Middle East. Applicant disclosed his drug use in security clearance applications (SCA) completed in March and August of 2014. He stated that he did not intend to use marijuana again because it was not consistent with his employment or clearance eligibility. He reiterated this intention during clearance interviews in May and October 2014.

In late 2015, Applicant consumed food that he knew contained marijuana. Early the next year he smoked marijuana. He reported this use on an April 2016 SCA. During a subsequent interview, he stated that he liked marijuana and would continue smoking it if it were not forbidden by his job and by the requirements of his security clearance. Applicant has not used marijuana since his use in early 2016. He testified that he will not use it again, and he signed a statement of intent to refrain from the use of illegal drugs, acknowledging that such conduct will be grounds for revoking his clearance.

The Judge stated that Applicant was honest and credible. However, he stated that Applicant was also sincere in 2014 when he made a prior promise to refrain from drug use, a promise that he did not keep. He concluded that Applicant’s misconduct creates a potential for exploitation and reflects poorly on his judgment.

Discussion

Applicant cites to record evidence that he contends the Judge did not consider, such as his years of abstinence from drug use, his forthright disclosures of his misconduct, his honesty, 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. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

We give due consideration to the Hearing Office case that Applicant has cited. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *Id.*

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. An applicant's misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about his or her judgment and reliability. *See, e.g.*, ISCR Case No. 16-03460 at 3 (App. Bd. May 24, 2018). 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: James E. Moody

James E. Moody
Administrative Judge
Member, 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