

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant asserts that the Judge should have engaged in an more extensive whole-person inquiry. The Directive, however, does not authorize a Judge to act as an investigator for either party. Having admitted the SOR allegations, Applicant was responsible for presenting evidence to mitigate the resulting security concerns, and he had the ultimate burden of persuasion for obtaining a security clearance. Adverse decision affirmed.

CASENO: 19-00402.a1

DATE: 11/06/2019

DATE: November 06, 2019

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 19-00402
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**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 March 6, 2019, 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) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 8, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his characterization of the evidence and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Under Guideline H, the SOR alleged that Applicant used marijuana with varying frequency from about 1979 to 1981 while granted access to classified information and that he used it in about December 2017 while granted access to classified information. Under Guideline E, the SOR alleged that Applicant falsified a security clearance application in 2010 for failing to disclose that he ever illegally used a controlled substance while possessing a security clearance, and the SOR also cross-alleged the Guideline H allegation that Applicant used marijuana in about December 2017 while granted access to classified information. In responding to the SOR, Applicant admitted each of the SOR allegations. The Judge found against Applicant on all of the allegations.

Applicant’s appeal brief contains documents and assertions that were not previously submitted to the Judge for consideration. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends the Judge erred in his characterization of the evidence. In the Decision, the Judge concluded:

Applicant admittedly was a recreational substance abuser between June 1979 and June 1981. Although he did not use marijuana for nearly four decades thereafter, in December 2017, he once again succumbed to smoking marijuana as part of what he described as a “ceremonial partaking.” [Decision at 6.]

Applicant argues that the Judge implied a pattern of behavior that did not exist and his use of word “succumbed” incorrectly reflects that Applicant had some underlying urge to use marijuana. From our review of the record, we conclude that the Judge’s material findings and conclusions of a security concern are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant also contends the Judge erred in his mitigation and whole-person analysis. For example, he points out that he ceased using marijuana for decades and only used it more recently at a solemn moment, a funeral. These arguments amount to a disagreement with the Judge’s weighing of the evidence and are not sufficient to demonstrate the Judge weighed the evidence in a manner

that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017). Applicant asserts that the Judge should have engaged in a more extensive whole-person inquiry. The Directive, however, does not authorize a Judge to act as an investigator for either party. *See, e.g.*, ISCR Case No. 11-06659 at 5 (App. Bd. Oct. 22, 2012). Having admitted the SOR allegations, Applicant was responsible for presenting evidence to mitigate the resulting security concerns, and he had the ultimate burden of persuasion for obtaining a security clearance. Directive ¶ E3.1.15. We also note that Applicant has not challenged on appeal the Judge unfavorable falsification finding, which is an independent basis for the Judge's adverse decision.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on the record.

### **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